82-691

No. __

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

CLIFFORD PERLMAN AND STUART PERLMAN,
Appellants,

—v.—

ATTORNEY GENERAL OF NEW JERSEY AND
NEW JERSEY CASINO CONTROL COMMISSION,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

APPENDIX TO JURISDICTIONAL STATEMENT

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APPENDIX A

Opinion of the Supreme Court of New Jersey

SUPREME COURT OF NEW JERSEY

90 N.J. 361

Argued March 22, 1982 Decided July 21, 1982

IN THE MATTER OF
THE APPLICATION OF BOARDWALK
REGENCY CORPORATION FOR A CASINO LICENSE

William R. Glendon, a member of the New York bar, argued the cause for applicant-appellant and cross-respondent Boardwalk Regency Corporation and appellants and cross-respondents Caesars World, Inc. and Caesars New Jersey, Inc. (*Wilentz, Goldman & Spitzer*, attorneys; *William P. Glendon, Guy C. Quinlan* and *Robert A. Rabbino, Jr.*, members of the New York bar, and *Morris Brown* and *Brian J. Molloy*, of counsel).

Irving Younger, a member of the New York and District of Columbia bars, argued the cause for appellants and cross-respondents Clifford S. Perlman and Stuart Z. Perlman (*Pitney, Hardin, Kipp & Szuch*, attorneys; *Irving Younger, Edward Bennett Williams, Harold Unger* and *Robert B. Barnett*, members of the District of Columbia bar, of counsel; *Clyde A. Szuch, Murray J. Laulicht, Marc S. Klein* and *Stuart M. Feinblatt*, on the briefs).

Michael R. Cole, Assistant Attorney General, argued the cause for respondent and cross-appellant Attorney General of New Jersey (*Irwin I. Kimmelman*, Attorney General of New Jersey, attorney; *Andrea M. Silkowitz*, Deputy Attorney General, on the briefs).

Robert J. Genatt, General Counsel, argued the cause for respondent and cross-appellant New Jersey Casino Control Commission (*Mr. Genatt*, attorney; *Robert J. Genatt, Thomas N. Auriemma, Dennis Daly* and *Edward R. Hannaman*, on the briefs).

The opinion of the Court was delivered by

CLIFFORD, J.

Boardwalk Regency Corporation (BRC) applied for a plenary license pursuant to the Casino Control Act, *N.J.S.A.* 5:12-1 to -152 (Act). After conducting investigations and hearings on the application, the Casino Control Commission (Commission) found that two of the directors of BRC, Clifford S. and Stuart Z. Perlman, had failed to satisfy the standards set forth in the Act regarding "casino key employees." See *N.J.S.A.* 5:12-84(c), -85(c) and -89(b)(2). The Commission ruled that if the Perlmans were not removed from positions of control in the extensive corporate hierarchy of which BRC and its corporate parents, Caesars New Jersey, Inc. (CNR) and Caesars World, Inc. (CWI), were a part, BRC's application would be denied. The Commission further required BRC to choose, by November 26, 1980, either (1) to sever the Perlmans permanently from any ownership or employment connection with BRC, any of its parent companies, and any subsidiary of CWI in this or any other jurisdiction, or (2) withdraw as a casino licensee from New Jersey. BRC was also directed to submit a plan for Commission approval to implement whichever alternative it chose. Following the Appellate Division's denial of a stay of these conditions this Court granted a stay pending appeal.

On consolidated appeals of the Perlmans and the corporations the Appellate Division affirmed the Commission's decision as to the non-qualification of the Perlmans, but reversed to the extent that it required the Perlmans to divest their personal interests from non-New Jersey subsidiaries of CWI having no "gaming" activities. *In re Boardwalk Regency Casino License Application*, 180 *N.J.Super.* 324 (1981). It remanded to the Commission to recast its order consistent with

the Appellate Division opinion and for "reasonable revision of the timetable." *Id.* at 350. The stay imposed by this Court remains in effect. *Ibid.*

The Perlmans and the corporations then filed notices of appeal to this Court, asserting "a substantial question arising under the Constitution of the United States", *R.*2:2-1(a); and we granted the petitions for certification of the Attorney General and the Commission regarding the Appellate Division's modification of the Commission's order, 89 *N.J.* 405 (1982). In addition, the Attorney General filed a notice of cross-appeal directed to the same issue raised in his petition, namely, the Appellate Division's invalidation of the Commission's requirement that the Perlmans disconnect themselves from all non-New Jersey non-gaming activities.

Specifically, the Commission required that as one of the conditions of BRC's casino licensure, the Perlmans must dispose of any interest whatsoever in subsidiaries of CWI that are situated outside of New Jersey and are not engaged in casino gaming activities; must be removed from any position as an officer, director or employee of such subsidiaries; and must not receive any remuneration in any form from such subsidiaries. It is this condition that the court below struck down. Today we reinstate that condition of licensure. With the exception of that single modification, we affirm the judgment of the Appellate Division substantially on the basis of Judge Fritz's comprehensive and perceptive opinion for that court.

I

While the Appellate Division's discussion of the facts, 180 *N.J.Super.* at 331-32, 335-36, suffices for our purposes today, several features nonetheless bear repeating. Initially, it is noteworthy that CWI, aptly described below as "[a] creature of humble beginnings," *id.* at 331, is today a multifaceted corporate giant, which, through its various nationwide subsidiaries, owns and operates businesses in both the gaming and non-gaming industries. Of particular import to this case, however, is CWI's relationship to BRC: BRC is a wholly owned subsidiary of CNJ in which CWI owns an 85% stock interest.

Moreover, since the Appellate Division decision, there have been several developments regarding the Perlmans' relationship with CWI and its subsidiaries. By way of background, when the matter first came before the Commission in September 1978, both Perlmans owned an extensive interest in CWI, CNJ, and thereby BRC. Clifford Perlman was Chairman of the Board of Directors and chief executive officer of CWI and CNJ, in addition to holding a 10% stock interest in CWI, and a 1.4% interest in CNJ. Stuart Perlman was Vice-Chairman of the Board of Directors of CWI and CNJ. His stock ownership in CWI, about 8%, was second only to that of Clifford Perlman. He also held approximately a 1% interest in CNJ.

In contrast to the facts as they appeared when the case was before the Commission and the Appellate Division, the Perlmans' relationship to BRC through their extensive interest in CWI and CNJ has since changed. On October 30, 1981, CWI and the Perlmans entered into an agreement that provided that (1) the Perlmans would sell, and CWI would purchase, the Perlmans' shares of CWI and CNJ stock; (2) the Perlmans would acquire promissory notes for part of the purchase price of their CWI and CNJ stock; and (3) the Perlmans would resign from all of their positions as officers and directors of CWI and its subsidiaries, save for the fact that Clifford Perlman would enter into an agreement to continue as Chairman of the Board and chief executive of Desert Palace, Inc., a CWI subsidiary responsible for operating CWI's Nevada based casino-hotels.[1] On December 15, 1981, the Commission, upon application by CWI, approved of the arrangement except for Clifford Perlman's continued relationship with Desert Palace, Inc. A shareholder's suit challenging the arrangement was settled before we heard argument on the case.

As a threshold matter we must decide whether the agreements entered into between CWI and the Perlmans render this controversy moot, and whether the parties thereto have standing to raise the issues projected by this appeal. In our approach

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1 The agreement further provided that should the decisions below remain intact after this appeal, CWI has the option under the agreement to terminate Clifford Perlman from his positions with Desert Palace, Inc.

to these threshold questions, we are not limited to the "case or controversy" requirement imposed on the federal courts by way of Article III of the Federal Constitution, *U.S.Const.* art. III § 2. See *Crescent Park Tenants Ass'n v. Realty Equity Corp. of N.J.*, 58 *N.J.* 98, 107 (1971). Rather, in this jurisdiction a controversy is justiciable when "the litigants' concern with the subject matter evidence[s] a sufficient stake and real adverseness." *Id.* Moreover, where the parties lack a legally cognizable interest because the issues presented are technically moot, they may nonetheless obtain judicial review when the matter involves an area of particular concern to the public interest. *See, e.g., John F. Kennedy Memorial Hospital v. Heston*, 58 *N.J.* 576, 579 (1971); *Doe v. Bridgeton Hospital Ass'n, Inc.*, 71 *N.J.* 478, 482 n.1 (1976).

It is apparent that both Clifford and Stuart Perlman have standing and that the issues are not moot. As to Clifford Perlman, his interest in the outcome of this appeal assuredly remains live by the very terms of the agreement itself, which provides that if he is directed by this Court to divest his interest in CWI's gaming subsidiaries, his position at Desert Palace will be in jeopardy. See *supra* (At 367 n.1).

As to Stuart Perlman as well there remains a legally cognizable interest in the outcome of this appeal. Notwithstanding his agreement with CWI, there exists at least the possibility of his future involvement with CWI or one of its subsidiaries, given the extensive influence available to him within the CWI corporate structure. Moreover, we will not fetter a litigant with technical notions of justiciability when the only question as to whether his claim is amenable to judicial review arises from his compliance with a lower court or agency decision.

Finally, as to both Clifford and Stuart Perlman, it is beyond question that the final adjudication of the issues is a matter of considerable importance to the casino industry as well as the general public. Accordingly, the Perlmans' claims are ripe for judicial review.

II

We turn to the merits of the case. Judge Fritz's exhaustive opinion below rejected a vigorous attack mounted by the Perlmans and the corporations regarding the Commission's determination that neither Clifford nor Stuart Perlman had met the statutory requirement of demonstrating by clear and convincing evidence their good character, honesty and integrity. That attack has been renewed before this Court. The Appellate Division initially rejected the argument that the Commission failed to discuss adequately the relevant evidence in reaching its ultimate conclusions and that its conclusions were not based on sufficient credible evidence in the record. 180 *N.J.Super.* at 335-39. The Appellate Division also found "ingenious" but "unpersuasive" the contentions of the Perlmans and the corporations that the Act requires only a demonstration of the putative casino key employee's *reputation* for good character. *Id.* at 343. In this regard the court below found that the Act requires a demonstration of good character *in fact,* given the Legislature's explicit statements of public policy and of the "evils" it sought to address through the imposition of exacting and rigorous licensing procedures. *Id.* at 343-44.

The Appellate Division also considered a barrage of constitutional challenges to the statutory "good character" criterion. It rejected the contention that this criterion violated the Perlmans' due process rights, because it was unduly vague, stating that "the potential key employee is reasonably apprised by the statute, as a matter of common knowledge, in light of ordinary human experience, as to the kind of conduct necessary to satisfy the statute." *Id.* at 347. Similarly lacking in merit, in the court's view, was the contention that the good character criterion "allow[ed] the Commission to rely on guilt by association." *Id.* at 348.

We have reviewed the legal principles that underlie each of these arguments and the record developed below upon which the Commission based its findings. As to the arguments raised by the Perlmans and the corporations, set forth above, we repeat our endorsement of Judge Fritz's painstaking analysis

and of the conclusions achieved in his opinion for the Appellate Division.

IV

There remains one further area of discussion. As a final point of contention the Perlmans and the corporations maintain that the Commission's Order unconstitutionally conditions BRC's licensure on the Perlmans' divestiture of their interests in non-New Jersey subsidiaries of CWI. Their challenge in this regard is mounted on the basis of the Commerce Clause, *U.S.Const.* art. I, § 8, and the Due Process Clause, *U.S.Const.* amend. XIV.

As matters stand today, with this Court's stay in effect (see *supra* at 365), BRC is operating a New Jersey casino and Clifford Perlman is acting as chairman of the board of CWI's subsidiary Desert Palace, Inc., operator of CWI's Nevada gambling casino, Caesars Palace. Caesars Palace's position in the scheme of things is only partially illustrated by the fact that it is CWI's principal and most profitable asset, having generated for the year ending April 30, 1980 about 43% of CWI's total gross revenues. In addition, it is the model after which CWI's hotel casino facilities, including BRC, are patterned, and it provides BRC with consultant services and management counselling. BRC and Caesars Palace share some directors in common. In his current position as Desert Palace's chairman Clifford Perlman has a direct relationship with Caesars Palace's management, and BRC has a direct relationship with the Nevada casino. The circumstances of Clifford Perlman's ability to influence BRC policy, too apparent to require further belabored explication, prompt our agreement with the Appellate Division's disposition of the Commerce Clause argument:

> The fallacy in this argument is that the order is said to purport "to regulate the management of substantial non-New Jersey operations * * * and to limit the Perlmans' business activities outside of New Jersey," when in fact it does no such thing. It neither regulates CWI nor any of its subsidiaries except BRC or the Perlmans, nor tells them what they must do. It only tells BRC, in terms completely

> in line with the statute and its purposes, the condition which must exist in view of its corporate connections, before it can enjoy the privilege of a casino license. No one will argue that New Jersey does not have a legitimate local public interest in determining who shall be thus licensed in New Jersey and under what conditions. We are satisfied this issue has no merit and warrants no further discussion. [180 *N.J.Super.* at 349.]

See *Pike v. Bruce Church, Inc.*, 397 *U.S.* 137, 142, 90 *S.Ct.* 844, 847, 25 *L.Ed.*2d 174, 178 (1970); *Exxon Corp. v. Governor of Maryland*, 437 *U.S.* 117, 124-127, 98 *S.Ct.* 2207, 2213-2215, 57 *L.Ed.*2d 91, 99-101 (1972).

With the same dispatch, and on the same basis, can we address the Due Process argument, it being manifest that the Commission's divestiture order bears a rational relationship to a legitimate state interest. Insofar as the Due Process Clause is concerned, since no fundamental right is affected by the Commission's order, that ends the matter. See *Ballou v. State Department of Civil Service*, 75 *N.J.* 365, 370-71 (1978); *State v. Krol*, 68 *N.J.* 236, 248 (1975).

The Commission's order also required the disassociation of the Perlmans' personal interest in the non-New Jersey subsidiaries of CWI that had and have no connection with the gaming industry. As to this aspect of the Order, the Appellate Division was not convinced that traditional notions of due process had been satisfied. Essentially, the court seemed uncertain that requiring divestiture to this extent would serve any "legitimate state interest." 180 *N.J.Super.* at 349. We harbor no doubts on the issue, and we fail to see why, in the context of this case, any distinction should be made between gaming and non-gaming subsidiaries. The question remains, in either instance, whether the presence of either Perlman in the CWI corporate structure carries with it the opportunity for them to exert their personal influence in the operation of BRC. In the non-gaming as well as the gaming setting that question must be answered in the affirmative.

The record demonstrates that for many years the Perlmans have wielded enormous power and influence throughout CWI,

which, it should be recalled, is simply a holding company with operating subsidiaries. Permitting the Perlmans to remain in or assume a structured, formal relationship of ownership, employment or management in one of those subsidiaries, albeit a non-gaming enterprise, would encourage—or at the very least allow—the exertion of power and influence within the corporate structure. Indeed, the court below appears to have recognized this possibility by its reservation unto the Commission of the right to act should a "Perlman effect" become "manifest", citing *N.J.S.A.* 5:12-129. 180 *N.J.Super.* at 349.

What the Commission sought to do was prevent the Perlmans from influencing gaming policy, rather than react to that influence after it has been exerted. This is a reasonable aim, particularly inasmuch as the evidence demonstrated a substantial likelihood that the Perlmans would leave their mark on BRC policy were they to obtain or continue to occupy official positions within the corporate family. This perception of the Perlmans' presence within the corporate structure is borne out by the corporation's assertion that "the loss of the Perlmans' services has been, and continues to be, a substantial detriment" to CWI. Moreover, the corporations call attention to the "substantial and uncontradicted" evidence as to the importance of the Perlmans' functions in CWI and as to "the harm which has resulted to the company since the Perlmans have been isolated from its affairs." Given the degree of importance that the corporations themselves attach to Clifford and Stuart Perlman, we cannot say that the Commission's apprehension of their influence on CWI and BRC, even from a non-gaming subsidiary position, is ill-founded; nor can we conclude that there is insufficient evidence to support the conclusion that divestiture of the Perlmans' interests in CWI's non-gaming subsidiaries bears a rational relationship to the state's legitimate interest in preventing them from exercising corporate power and influence over BRC.

V

Except as modified herein the judgment below is affirmed. All provisions of the Commission's order are reinstated, and the Commission is directed to establish a new timetable for submission of BRC's plans. The stay heretofore entered is vacated, effective ten days after release of this opinion.

PASHMAN, J., concurring in part and dissenting in part.

I concur with the majority opinion except insofar as it affirms the Casino Control Commission's order that the Perlmans separate themselves from non-New Jersey subsidiaries of Caesars World International (CWI). I would remand the case to the Commission for a factual finding on the Perlmans' ability to control Boardwalk Regency Corporation from positions in any other CWI subsidiaries.

The Casino Control Act provides that no corporation shall be eligible for a casino license unless its key employees or controlling persons are individually qualified for licenses. *N.J.S.A.* 5:12-85(c) provides in part:

> No corporation shall be eligible to hold a casino license unless each officer; each director; each person who directly or indirectly holds any beneficial interest or ownership of the securities issued by the corporation; any person who in the opinion of the commission has the ability to control the corporation . . . or other person whom the commission may consider appropriate for approval or qualification would, but for residence, individually be qualified for approval as a casino key employee pursuant to the provisions of the act.

When Boardwalk Regency applied for a license, Clifford Perlman was chairman of the boards of directors of CWI and Caesars New Jersey (CNJ), the two parent corporations of Boardwalk Regency. Stuart Perlman was vice chairman of the boards of the two parent companies and a large stockholder in both. There was no question that they were key employees and controlling persons as defined in the statute.

However, it is no longer clear that the Perlmans fit within any of the categories of persons that must be individually qualified for Boardwalk Regency to retain its license under *N.J.S.A.* 5:12-86(c). They have sold all their stock in Caesars World and Caesars New Jersey and have resigned from their positions as officers in those corporations. Their sole remaining connection with the corporate family is Clifford Perlman's position as chairman of the board of directors and chief executive officer of the subsidiary of Caesars World that operates its Nevada hotel and casino.

Since the Perlmans are no longer directors, officers, employees or owners of any of the parent companies of Boardwalk Regency, the only remaining statutory category possibly applicable to them is that of a "person who in the opinion of the commission has the ability to control" Boardwalk Regency. *N.J.S.A.* 5:12-85(c). The Commission has never specifically determined whether the Perlmans would be able to control Boardwalk Regency solely from positions in other subsidiaries of Caesar's World. There is no evidence in the record on the Perlmans' ability to control the New Jersey licensee without control of and stock ownership in its parent corporations. Unless they are able to exercise such control, they need not be individually qualified for Boardwalk Regency to retain its license.

I am not convinced that the evidence cited by the majority, *ante* at 370-371, 372, is sufficient to conclude that the Perlmans can in fact control Boardwalk Regency from out-of-state CWI subsidiaries. The mere fact that the various corporations praise the Perlmans and want them back in the New Jersey licensee is not sufficient proof that the Perlmans can control the licensee solely from positions in other CWI subsidiaries. The evidence that the Nevada subsidiary offers counseling services to Boardwalk Regency is more to the point, but it is insufficiently developed in the record. Moreover, there is no evidence at all that the Perlmans can control Boardwalk Regency from non-gaming subsidiaries. As I see it, the factual situation has changed substantially since the Commission's determination. Any order we make should be based on the current situation.

I would remand the case to the Commission for a hearing on the Perlmans' continued ability to control the New Jersey licensee from positions in other CWI subsidiaries. This factual determination is a prerequisite to holding that either Perlman remains a controlling person within the meaning of *N.J.S.A.* 5:12-85(c). Without such a finding, there is no basis for requiring Clifford Perlman to withdraw from the Nevada subsidiary as a prerequisite to licensing Boardwalk Regency. There is also no factual basis for ordering the Perlmans to refrain from any future connections with other CWI subsidiaries. Because the majority upholds the Commission order that the Perlmans separate themselves from all CWI subsidiaries without such a factual determination, I dissent.

For affirmance and modification—Justices CLIFFORD, SCHREIBER, HANDLER, POLLOCK and O'HERN—5.

Concurring and dissenting in part—Justice PASHMAN—1.

APPENDIX B

Opinion of the Superior Court of New Jersey

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

180 N.J.Super. 324

Argued Jan. 20, 1981 Decided July 21, 1981

In the Matter of the Application of

BOARDWALK REGENCY CORPORATION
FOR A CASINO LICENSE.

WILLIAM R. GLENDON, New York City, for applicant-appellant Boardwalk Regency Corp. and appellants Caesars World, Inc. and Caesars New Jersey, Inc. (Wilentz, Goldman & Spitzer, Woodbridge, attorneys; Morris Brown and Brian J. Molloy, Woodbridge, of counsel; and Rogers & Wells, New York City, attorneys; William R. Glendon, Guy C. Quinlan, John H. Carley and Robert A. Rabbino, Jr., New York City, of counsel).

IRVING YOUNGER, New York City, for appellants Clifford S. Perlman and Stuart Z. Perlman (Pitney, Hardin & Kipp, Morristown, attorneys; Clyde A. Szuch, Murray J. Laulicht, Marc S. Klein and Stuart M. Feinblatt, Morristown, on the brief; and Williams & Connolly, Washington, D. C., attorneys; Edward Bennett Williams, Harold Ungar and Robert B. Barnett, Washington, D. C., on the brief).

MICHAEL R. COLE, Asst. Atty. Gen., for respondent Attorney General (John J. Degnan, Atty. Gen., attorney; Michael R. Cole and Andrea M. Silkowitz and Anthony J. Parrillo, Deputy Attys. Gen., on the brief).

Before Judges FRITZ, POLOW and JOELSON.

The opinion of the court was delivered by

FRITZ, P. J. A. D.

Following extensive investigation and formal hearings on the application of Boardwalk Regency Corporation (BRC) for a plenary casino license, the Casino Control Commission (Commission) determined that BRC qualified except for the presence of Stuart Z. and Clifford S. Perlman, brothers with extensive interests in the operation. As a consequence, the grant of a plenary license was conditioned in effect on divestiture of any Perlman interest which had any capacity for exerting control over BRC or any related entity. These consolidated appeals by BRC, Caesars World, Inc. (CWI), Caesars New Jersey, Inc. (CNJ) and Stuart and Clifford Perlman challenge that ruling and the constitutionality of *N.J.S.A.* 5:12-89.

Direct and indirect Perlman interest in and influence upon the affairs of BRC and ample cause for the insistence of the Commission that it be persuaded of the qualification of each of the brothers as a "casino key employee" (*N.J.S.A.* 5:12-85 c and d) appear indisputably from the genesis of the corporation and are in fact not disputed.[1] BRC is a wholly-owned subsidiary of CNJ, 86% of the stock of which is in turn owned by CWI. A creature of humble beginnings, CWI was launched in 1956 when Stuart and Clifford Perlman purchased a "Lum's" restaurant, a small fast-food eating establishment that specialized in hot dogs steamed in beer. The purchase price was $25,000, "half down and the balance over three years." About 1965 the Perlmans started franchising the Lum's stores. Ultimately there were almost 400 of these restaurants in 30 or more

1 One of the expressed concerns of all the appellants is that the Perlmans are such a prime force in the corporate structure and interstructure that their departure would seriously impair the capacity of the corporations to borrow money and otherwise intrude upon the financial operations of the corporations to their detriment.

states. Lum's was listed on the New York stock exchange in 1969.

1969 was also the year the Perlmans negotiated the purchase of Caesars Palace for 60 million dollars. In 1971 the recession in the restaurant business and the need of the growing Caesars Palace for money produced the sale of the restaurants and the change of the corporate name to Caesars World.

Today CWI is listed on the New York and Pacific Coast stock exchanges. Its 26,100,000 shares of outstanding stock are owned by 70,000 shareholders. Consolidated revenues approximate a half billion dollars annually. Clifford Perlman, chairman of the board and chief executive officer of CWI, owns approximately 10% of the outstanding stock. His brother Stuart owns about 8% of the stock of CWI and holds the position of vice-chairman of the board of directors.

At the conclusion of the hearings the Commission noted, with respect to one of the individuals in the corporate structure who was found to be qualified: "As in all areas of human endeavor, there is in the regulatory process never a situation absent some scintilla, some particle of doubt." Nevertheless, it found qualified for a license the corporation and all the persons required to qualify by *N.J.S.A.* 5:12-85 c and d, except Clifford and Stuart Perlman. Upon clearly articulated findings and for reasons expressed at length, it announced that it was unable "to find by clear and convincing evidence that Clifford Perlman possesses the good character, honesty and integrity demanded by the Casino Control Act," and that "BRC has failed to meet the affirmative responsibility of establishing the good character, honesty and integrity of Stuart Perlman." The substance of the consequent order was that the application of BRC for a license would be granted but only upon the conditions that

> . . . both Clifford and Stuart Perlman . . . dispose of any interest whatsoever which either of them may hold in Caesars World, Inc., Caesars New Jersey, Inc. or in any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; . . . both Clifford and Stuart Perlman be removed from any position as an officer, director or employee of Caesars World, Inc.,

> Caesars New Jersey, Inc., Boardwalk Regency Corporation and any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; . . . [and that] neither Clifford or Stuart Perlman shall receive any remuneration in any form, whether for services rendered or otherwise, from Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation, or from any other subsidiary company of Caesars World, Inc., in this or any other jurisdiction.

The order further provided for the submission of "a detailed plan and timetable for accomplishing the divestiture of all such securities and removal from all such positions."

The Supreme Court "suspended" "the conditions imposed on the issuance of a license" pending "disposition of the pending appeals" here being considered.

At the outset we observe that all parties agree, as do we, that with respect to the factfinding by the agency our obligation is set and our privilege of independence is limited by *Mayflower Securities v. Bureau of Securities*, 64 *N.J.* 85, 312 *A.*2d 497 (1973). Basically we search to discover whether the findings of fact could reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard for the opportunity of the Commissioners who heard the witnesses to judge of their credibility. Where expertise is a pertinent fact, we must accord due regard in that respect as well. We agree with a number of appellants' contentions in respect to these standards and others governing our review. First, this search does not require deference to the Commission respecting factual findings in any area in which those findings rest upon a determination as to worth, plausibility, consistency or other tangible considerations apparent from the face of the record, as to which the Commission is no more particularly situated to decide them than are we. *See Dolson v. Anastasia*, 55 *N.J.* 2, 7, 258 *A.*2d 706 (1969). Second, it is beyond cavil that in the review function the whole record must be considered. As is expressly pointed out in *Mayflower*, *supra*:

> . . . The appellate application of this standard [*i.e.*, that of *Close v. Kordulak Bros.*, 44 *N.J.* 589, 599 [210 *A.*2d 753] (1965)] requires far more than a perfunctory review; it calls for careful and principled consideration of the agency record and findings in the manner outlined in *State v. Johnson*, 42 *N.J.* 146, 161-162 [199 *A.*2d 809] (1964). [64 *N.J.* at 93, 312 *A.*2d 497]

We also concur that we are "in no way bound" by the agency's interpretation of a statute or its determination of any strictly legal issue. *Mayflower, supra,* at 93, 312 *A.*2d 497. Finally, the requirement that we defer to the expertise of the agency is only as compelling as is the expertise of the agency, and this generally only in technical matters which lie within its special competence. *N.J. Bell Tel. Co. v. State,* 162 *N.J.Super.* 60, 77, 392 *A.*2d 216 (App.Div.1978). Where, as is apparently the case here, expertise has not yet developed by experience or special training, no particular deference need be accorded the agency's findings of fact unless there are "demeanor credibility" factors. We do not suggest by this latter comment that special expertise exists in the determination of many non-technical qualities or properties, such as good character, honesty and integrity. More times than not this type assay calls for the application of common sense and judgment, after credibility problems have been solved.

A careful review of the record in testing the findings is vital to the proper management of a government of laws, for a determination predicated on unsupported findings is the essence of arbitrary and capricious action. *See Thomas v. Morris Tp. Bd. of Ed.,* 89 *N.J.Super.* 327, 215 *A.*2d 35 (App.Div. 1965), aff'd o. b. 46 *N.J.* 581 (1966); *Morgan v. Saslaff,* 123 *N.J.Super.* 35, 38, 301 *A.*2d 456 (App.Div.1973). If we are satisfied after an application of the standards set out above that the findings of fact do not pass muster, we will not hesitate to reverse or remand, *N.J.S.A.* 5:12-110 c(3), or, inasmuch as the appeal is "in accordance with the Rules of Court," *N.J.S.A.* 5:12-110 a, make our own findings and draw our own conclusions. *R.* 2:10-5; *State v. Johnson,* 42 *N.J.* 146, 162, 199 *A.*2d 809 (1964).

On the other hand, if it appears that the findings might reasonably have been reached from sufficient credible evidence, we will not disturb them even in cases in which, had we been doing it, we would have done it differently. Proper respect for the obligation of the agency to accomplish its statutory obligations and consideration for implementation of the legislative intent in the manner designed by the Legislature causes us to proceed with especial restraint in agency matters. *See New Jersey Guild of Hearing Aid Dispensers v. Long*, 75 *N.J.*, 544, 562-563, 384 *A.*2d 795 (1978). Our original factfinding authority must be exercised only with great frugality and in none but a clear case free of doubt. *See Greenfield v. Dusseault*, 60 *N.J.Super.* 436, 444, 159 *A.*2d 433 (App.Div.1960), *aff'd* on majority opinion 33 *N.J.* 78, 161 *A.*2d 475 (1960). A difference of opinion concerning evidential persuasiveness of relevant testimony certainly does not justify judicial interference. *In re Howard Savings Bk.*, 143 *N.J.Super.* 1, 10, 362 *A.*2d 592 (App.Div.1976). Factual findings of an administrative agency are generally sustained if they are supported by substantial evidence on the whole record. *Atkinson v. Parsekian*, 37 *N.J.* 143, 149, 179 *A.*2d 732 (1962).

We have gone to these lengths in explication of legal issues probably not the subject of any substantial disagreement between the adverse factions, in order that the parties might be expressly advised, at the outset, of the criteria we have employed in measuring appellants' challenges. Although we are tempted to begin with attention to the statute and appellants' broadside attacks on it, we are satisfied that exploration of the findings as a first effort, and of appellants' challenges with respect to these, will make more meaningful a later consideration of the legislative mandate.

As noted above, the conclusionary finding[2] of the Commission respecting both Perlmans was that it had not been persuaded by clear and convincing evidence that either of them possessed the good character, honesty and integrity required by the Casino Control Act to qualify for a license. The basic or

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2 See the excellent dissertation by the Hon. Milton B. Conford on "Findings of Facts and Conclusions of Law," 92 *N.J.L.J.* 225 (1969).

evidentiary facts upon which this conclusion was founded included among others: Clifford Perlman's "repeated and enduring" relationship with one Alvin I. Malnik, "a person of unsuitable character and unsuitable reputation . . . [who] associated with persons engaged in organized criminal activities, and . . . [who had] himself participated in transactions that were clearly illegitimate and illegal," at times subsequent to the media identification of an alleged business connection between Malnik and Meyer Lansky, a reputed organized crime figure. It was stipulated that the CWI directors were told as early as July 1971 that although Malnik, once indicted for tax fraud, had never been convicted of a crime, the "Federal law enforcement agencies apparently believed Malnik was involved in organized crime." The Commission found that the Malnik-Perlman association persisted long after Clifford Perlman's attention was called to the allegations of unsavoriness respecting Malnik's other friends. Indeed, it found that it persisted even after Philip Hannifan, chairman of the Nevada Gaming Control Board, had "voiced his concerns over Mr. Perlman's association with an individual of Mr. Malnik's reputation," and had received a commitment from Perlman "to extricate himself from the Cricket Club [one of the Perlman-Malnik associations] if Mr. Malnik would not institute a libel suit against Hank Messick, the author of *Lansky*."

Appellants' response is impassioned and zealous. They point to evidence that "[i]n 1972, when Clifford Perlman entered into the Cricket Club transaction, he had no reason to believe that there was any obstacle to his doing so. . . . [M]any other reputable individuals and financial institutions saw no problem at this time in associating with Malnik." They explain the continuance of the Cricket Club relationship by saying that "Perlman tried repeatedly to sever his connections with the venture, and subsequently did terminate his ties with the Cricket Club, after great difficulty and heavy personal financial sacrifice." They direct our attention to the fact that "In its eagerness to make its point, the Commission suppresses the testimony of Hannafin that he never took Perlman's expression of intent to get out of the deal as a commitment." Both briefs emphasize that Hannafin, no longer a Nevada official, testified he was satisfied with Perlman's efforts.

The foregoing is only one area of several which troubled the Commission. It is typical of the others. As is most certainly to be anticipated, a large portion of the testimony was susceptible not only of varying inferences but of varying conclusions. In like fashion, appellants point to substantial areas of testimony which are highly complimentary and praiseful of the Perlman brothers, most of it from business and banking.

Appellants claim the Commission distorted the evidence. Whether by unintentional hyperbole or as a result of faithful (but we believe misplaced) conviction, they assert that the findings are "completely unsupported by the record." These things are just not so. The Commission chose between conflicts in evidence, conflicts in available reasonable inferences and conflicts in conclusions which might be drawn. This was not only their right, it was their duty. A careful review of the record convinces us that regardless of evidence to the contrary, the findings they reached were reasonably available on the whole record and we will not disturb those findings. *Mayflower, supra.*

With respect to the contention of Stuart Perlman that his disqualification, at least, resulted from "administrative afterthought" on a record where there is "virtually no evidence . . . directed specifically against him," we say only that we are in hearty agreement with the conclusion of the Commission: "Stuart and Clifford Perlman are more than just brothers." We are persuaded, as was the Commission, that the affairs of the brothers are inextricably entwined. Parenthetically, we observe that judicious administrative afterthought may well be a salutary purpose of the administrative hearing. What one perceives to be "afterthought," another might regard as "careful consideration."

Appellants Perlman also complain of that which they characterize as a "procedural inadequacy" respecting the findings of fact. They claim that in marshalling its findings the Commission ignored (or at least was unconcerned with) "overwhelming evidence" of distinguished business careers and model corporate existence of praiseworthy propriety. Citing the concurring opinion of Justice Handler in *In re Kessler Mem. Hosp. Reimbursement*, 78 *N.J.* 564, 573, 578-579, 397 *A.*2d

656 (1979), they charge that the agency has failed to identify the evidence it found insufficient.

The Commission did not ignore the favorable testimony. Quantitating the supportive factual presentation in terms of "a great deal of evidence," it said:

> In an effort to meet its statutorily imposed burden, BRC produced a great deal of evidence in support of both the good reputation of Clifford Perlman and the good character, honesty and integrity of Clifford Perlman. Several witnesses testified as to Clifford Perlman's good reputation in the financial community, in the casino hotel industry and in the communities where he lives and works. Most of these witnesses also testified as to his good character, honesty and integrity. Suffice it to say that the Commission has very carefully examined, considered and weighed all of this evidence.

It also spoke of the evidence produced "in support of the qualification of Stuart Perlman all of which has been carefully examined, considered and weighed." The distinction between findings of proof and findings of nonproof or inadequate proof or proofs which are not creditable, and the consequent obligations of a reviewing court, are discussed in *Kaplowitz v. K & R Appliances, Inc.*, 108 *N.J.Super.* 54, 61-62, 259 *A.*2d 922 (App.Div.1969), certif. den. 55 *N.J.* 452, 262 *A.*2d 706 (1970).

We have no doubt at all respecting "the grounds upon which the administrative agency has acted, its reasoning, and the manner in which the evidence of record has been transmuted into ultimate conclusions." *In re Kessler Mem. Hosp. Reimbursement, supra*, Handler, J., concurring, 78 *N.J.* at 578-579, 397 *A.*2d 656. We are satisfied that these have been "clearly disclosed and carefully explained." *Ibid.* Indeed, it is the clarity of that explanation that convinces us the Commission assuredly heard what was being said by the financial community, the personal community and the industry favorable to the Perlmans. Despite this, the Commissioners believed the shortcomings to be in fatally critical areas. This is exemplified by a question posed in their opinion:

> Once again, in the absence of any credible explanation presented in this record, we are left with a serious question. Why did Clifford Perlman, in late 1974, lead his company into its second (and his third) business entanglement with Alvin Malnik, especially in light of his November 1972 discussion with the Chairman of the Nevada Gaming Control Board?

In the conclusion implicit in this inquiry, and after an extraordinarily careful review of the record in view of the importance and novelty of the questions before us, we will not substitute our judgment for that of the agency. *New Jersey Guild of Hearing Aid Dispensers v. Long, supra.*

Although the statute is discussed in greater detail below, we pause to note that the appellants Perlman at one point in their brief contend simply that the "Commission's findings do not support a bad character conclusion." Such a conclusion is unnecessary. The statutory burden to demonstrate affirmatively the qualifying attributes, whatever they might be, has been expressly and clearly placed on the applicant by the Legislature and is subject to the canon of clear and convincing evidence. *N.J.S.A.* 5:12-84, 5:12-89. It is not necessary to disqualification that the applicant or any personnel required to be qualified be of demonstrably bad character. Disqualification is justified by their failure to prove themselves qualified by clear and convincing evidence. Such evidence is that which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Aiello v. Knoll Golf Club*, 64 *N.J.Super.* 156, 162, 165 *A.*2d 531 (App.Div.1960). Particularly in this sensitive field, *N.J.S.A.* 5:12-1 b(9); *Bally Mfg. Corp. v. N.J. Casino Control Comm'n*, 85 *N.J.* 325, 331, 426 *A.*2d 1000 (1981), to doubt is most certainly to deny.

We turn our attention to the statute. The attack of appellants ranges wide. The brief filed by the corporate appellants, citing *N.J.S.A.* 5:12-1(b)(7) and the 1977 State Commission of Inves-

tigation Report and Recommendations on Casino Gambling, charges that "the statute's purpose is clear: it seeks to guard against any danger of infiltration by organized crime, and at the same time to protect applicants against being penalized for innocent associations." It then argues that the Commission decided the disqualification solely—although the brief does not use the word "solely," it is inescapably implied—"because of innocent associations wholly unrelated to the statutory purpose," thus having "misread, and impermissibly broadened, the statute."

The argument is subtle, but unpersuasive. We agree entirely that the statute was intended to guard against any danger of infiltration by organized crime. This premise is too obvious to require further elaboration. It is probable as well that reasonable persons, including legislators, desire to shield corporations and individuals from penalty where the only offense is "innocent associations." But it is equally obvious to us that protection against criminal elements is not at all the only regulatory purpose of the statute. The second subsection after that cited by appellants reads:

> Since casino operations are especially sensitive and in need of public control and supervision, and since it is vital to the interests of the State *to prevent entry, directly or indirectly,* into such operations or the ancillary industries regulated by this act *of persons who have pursued economic gains in an occupational manner or context* which are *in violation of the* criminal or *civil public policies of this State,* the regulatory and investigatory powers and duties shall be exercised to the fullest extent consistent with law to avoid entry of such persons into the casino operations or the ancillary industries regulated by this act.
>
> [*N.J.S.A.* 5:12-1 b(9); emphasis supplied]

Clearly the Legislature did not intend to limit the power of disqualification only to situations presenting a danger of infiltration by organized crime, or as a matter of fact any other kind of crime. See *N.J.S.A.* 5:12-86.

As suggested above, we are not critical of a proposition denouncing guilt adjudication predicated solely on "unknowing or otherwise innocent association" and are sensitive to the difficulties defending against such a premise. Again we differ, however, with appellants' thesis that such a finding was the sole cause for disqualification of the Perlmans. For this purpose only, we will assume the impugned associations were either unknowing or innocent. Nonetheless, it is apparent from the clear findings of the Commission that it was obviously disturbed by such things as the then and later apparent insensitivity of the brothers to the potential impact of those associations upon the industry, those who regulate it, those who manage it, those who patronize it and the public in general. This sensitivity on the part of the Commission respecting the insensitivity on the part of the Perlmans resides safely within the four corners of the statute where strict regulation is expressly mandated. The purpose for strict regulation is also expressly stated: "An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." *N.J.S.A.* 5:12-1 b(6).

There is nothing inherently wrong with sensitive, strict regulation. It has for many years been exercised in this State in certain industries. Liquor, with "its inherent evils," has been dealt with as "a subject apart." *Grand Union Co. v. Sills,* 43 *N.J.* 390, 398, 204 *A.*2d 853 (1964). The legislative power to regulate such a "nonessential and inherently dangerous commodity," as a wholly constitutional expression of concern for public health, safety, morals or general welfare, has been said to be almost without limit. *Id.* at 403-404, 204 *A.*2d 853. Horse racing, with attendant legalized gambling, "strongly affected by a public interest," has been held to be a "highly appropriate" subject for close regulatory supervision, *Jersey Downs, Inc. v. N. J. Racing Comm'n,* 102 *N.J.Super.* 451, 457, 246 *A.*2d 146 (App.Div.1968), a condition recognized as desirable for many years, *Niglio v. N. J. Racing Comm'n,* 158 *N.J.Super.* 182, 188, 385 *A.*2d 925 (App.Div.1978). We see every reason, including those expressed in *N.J.S.A.* 5:12-1 b,

for legalized casino gaming to take its deserved place among those industries. *See Bally Mfg. Corp. v. N. J. Casino Control Comm'n, supra,* 85 *N.J.* at 331, 426 *A.*2d 1000. Twenty years before New Jersey enacted the Casino Control Act, Nevada, the home port of legalized gambling in the United States, pointed out at least one good reason for strict regulation. In *Nevada Tax Comm'n v. Hicks,* 73 *Nev.* 115, 310 *P.*2d 852 (Sup.Ct.1957), the court declared:

> For gambling to take its place as a lawful enterprise in Nevada it is not enough that this state has named it lawful. We have but offered it the opportunity for lawful existence. The offer is a risky one, not only for the people of this state, but for the entire nation. Organized crime must not be given refuge here through the legitimatizing of one of its principal sources of income. Nevada gambling, if it is to succeed as a lawful enterprise, must be free from the criminal and corruptive taint acquired by gambling beyond our borders. If this is to be accomplished not only must the operation of gambling be carefully controlled, but the character and background of those who would engage in gambling in this state must be carefully scrutinized. [310 *P.*2d at 854]

For the reason there declared and for the several other reasons set forth in our statute, New Jersey, inspired by legislative fiat and common sense, must be as careful in the scrutiny of the character and background of those who would engage in gambling in this State as is Nevada there.

As Justice Handler recently observed in *Knight v. Margate,* 86 *N.J.* 374, 431 *A.*2d 833 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." *N.J.S.A.* 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement

> supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." *Id.* Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal backgrounds and associations but also persons "deficient in business probity" should be excluded from casino gaming operations. *N.J.S.A.* 5:12-1(b)(7). In this vein, because casino operations "are especially sensitive and in need of public control and supervision," the statute dictates that "the regulatory and investigatory powers and duties shall be exercised to the fullest extent consistent with law to avoid the entry" into casino operations, directly or indirectly, of persons whose economic or occupational pursuits are violative of the "criminal or civil public policies of this State." *N.J.S.A.* 5:12-1(b)(9). These public policy objectives were augmented by later amendments which declared that even though "[c]ontinuity and stability in casino gaming opertions" were important, these could not be achieved by allowing persons with "unacceptable backgrounds and records of behavior" to control casinos. *N.J.S.A.* 5:12-1(b)(15); *L.* 1978, *c.* 7, § 1. [at 381-82, 431 *A.*2d 833]

For these reasons, we disagree with the argument that the Commission "misread, and impermissibly broadened, the statute." We find no overreaching.

The Perlman brief challenges the statute and its application in two principal respects.[3] First, they insist that from the

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3 The Attorney General contends that since "[a]t the hearing below applicants repeatedly referred to the pivotal issue in the case being an evaluation of the totality of the Perlmans' character" they ought now to be deemed to have waived any other "theory now sought to be raised." The Perlmans reply that since they are appellants here but were not parties below they cannot be charged with waiver from the lips of CWI's counsel. This response has technical merit. Its persuasiveness is impaired by the undeniable affinity between the Perlmans and CWI. No matter. In this significant case of apparent first impression we will decide the issues on their merits or lack thereof.

finding of the Commission, couched as it is in terms of the failure of the applicant to prove by clear and convincing evidence the "good character, honesty and integrity" of the Perlmans, it is apparent that body has gone beyond the authority delegated and has disqualified the Perlmans on a ground not permitted by the statute, *i. e.*, the failure to demonstrate the *fact* of their good character, honesty and integrity. The delegation, the Perlmans argue, is limited to an ascertainment of the *reputation* for good character, honesty and integrity. This argument is posited on a theory that the disqualifying factors set forth in *N.J.S.A.* 5:12-86 are so expressly inclusive otherwise that subsection "a" requires nothing more than literal compliance with *N.J.S.A.* 5:12-89.

Again we find the argument ingenious, for the latter statute does indeed refer to the "reputation for good character, honesty and integrity." However, we find it unpersuasive because it ignores the prime objective of statutory construction: the search for legislative intent. *Safeway Trails, Inc. v. Furman,* 41 *N.J.* 467, 477, 197 *A.*2d 366 (1964), *cert.* den. 379 *U.S.* 14, 85 *S.Ct.* 144, 13 *L.Ed.*2d 84 (1964). In such pursuit the intent is to be perceived from the whole statute, and all parts of the statute must be read so that they are in alignment with the intent of the entire act. *Seatrain Lines, Inc. v. Medina,* 39 *N.J.* 222, 226-227, 188 *A.*2d 169 (1963). The statute must be read mindful of the evil which it is designed to eliminate and of the proposed remedy. *Brewer v. Porch,* 53 *N.J.* 167, 174 (1969). Broad latitude is to be accorded the probable intent of the Legislature in this regard toward the end of best serving these beneficent purposes. *Continental Cas. Co. v. Knuckles,* 142 *N.J.Super.* 162, 167, 361 *A.*2d 44 (App. Div.1976). Nor will we permit the intent of the Legislature to be subverted by language which, read literally, appears to contravene that which the Legislature actually intended. As we said in *Continental Cas. Co. v. Knuckles*:

> First attention should go to the purpose of the legislation. "Where a literal rendering will lead to a result not in accord with the essential purpose and design of the act,

> the spirit of the law will control the letter." *N.J. Builders, etc., Ass'n v. Blair,* 60 *N.J.* 330, 338 [288 *A.*2d 855] (1972). It cannot be better put than as by Justice Heher in *San-Lan Builders, Inc. v. Baxendale,* 28 *N.J.* 148, 155 [145 *A.*2d 457] (1958), "Reason is the soul of law." [at 167, 361 *A.*2d 44]

Thus viewed, the Casino Control Act is obviously intended to disqualify those who cannot demonstrate the fact of good character, honesty and integrity. As we observed above, the preambulary declaration of policy establishes the objective of excluding those who as a matter of fact "have pursued economic gains in an occupational manner or context . . . in violation of the . . . civil public policies of this State." *N.J.S.A.* 5:12-1 b(9). No suggestion appears in this declaration that the facts supporting qualities inimical to the general and salutary purposes of the statute, once found, need be augmented by a further finding of a reputation for those qualities.

We acknowledge our responsibility not to ignore the words used by the Legislature, *Hackensack Bd. of Ed. v. Hackensack,* 63 *N.J.Super.* 560, 569, 165 *A.*2d 33 (App.Div.1960), and, if possible, to harmonize the meaning of the statute so that no words or phrases are deemed inoperative, superfluous or meaningless. *Abbotts Dairies v. Armstrong,* 14 *N.J.* 319, 327-328, 102 *A.*2d 372 (1954). In this case no problem arises because we do not think the phrase in general and the word "reputation" in particular were unintended or inadvertent. But attentive as well to our obligation to make particular words responsive to the essential principle of the statute, *Wollen v. Fort Lee,* 27 *N.J.* 408, 418, 142 *A.*2d 881 (1958), we are persuaded they were employed for a purpose consistent with the design of the statute other than that suggested by appellants. Obviously, a key employee would be unable to satisfy the heavy burden of the applicant simply by appearing before the Commission and assuring its members that he was honest and diligent and had never held up a bank or even been the victim of a parking ticket. His avenue is really limited to producing

others who will vouch for his integrity and noncriminality. The "reputation" language was provided to afford him an opportunity to demonstrate his wares. We are convinced it was not designed as an incontestable escape valve for one who without it may have little chance. This is the meaning appellants attribute to the language. In their brief they insist that once the Commission found that several witnesses testified as to Clifford Perlman's good reputation, its "task was properly over at that point."

From this it would follow that a parade of friendly witnesses could override proven disqualifying character facts. We are certain the Legislature never intended this. We will not interpret a statute so as to produce an unreasonable or absurd result. *State v. Gill*, 47 *N.J.* 441, 444, 221 *A.*2d 521 (1966).

We are convinced that the authority delegated was to enable the Commission to determine what the key employee is, rather than what he is thought to be. If what he is thought to be satisfies them as to what he is, so be it. That is the true purpose of the statute and the reason the word "reputation" appears.

Second, the Perlmans complain of the purportedly unconstitutional "vagueness" of the "good character" criterion.

A statute is unconstitutional if it is couched in terms "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *State v. Lashinsky*, 81 *N.J.* 1, 17-18, 404 *A.*2d 1121 (1979). Nevertheless, the fact that certain statutory phrases are not "impeccable specimens of draftsmanship does not impugn their legality," as long as procedural and judicial safeguards are available. *In Review of Health Care Admin. Bd. v. Finley*, 168 *N.J.Super.* 152, 167, 402 *A.*2d 246 (App.Div.1979), aff'd *sub nom. New Jersey Ass'n of Health Care Facilities v. Finley*, 83 *N.J.* 67, 415 *A.*2d 1147 (1980), app. dism. *sub nom. Wayne Haven Nursing Home v. Finley*, 449 *U.S.* 944, 101 *S.Ct.* 342, 66 *L.Ed.*2d 208 (1980).

Furthermore, the words of a statute must not be considered to exist in a vacuum, without reference to relevant policy considerations as they are expressed in the whole act, or

without regard for the words of balance of the statute. *See Matawan v. Monmouth Cty. Tax Bd.*, 51 *N.J.* 291, 299, 240 *A.*2d 8 (1968). It is not too much for the law to expect "men of common intelligence" to realize this.

We are satisfied that thus viewed, the words "good character" in the context of the Casino Control Act leave to men of common intelligence little doubt about their meaning.

As was said in *In re DeMarco Suspension*, 83 *N.J.* 25, 414 *A.*2d 1339 (1980), in connection with a statute regulating physicians:

> The question ultimately is one of fairness, given the statute and its provisions, and given the situation of the defendant. Should he have understood that his conduct was proscribed, should he have understood that the penalty about to be imposed was the sanction intended by the Legislature? The test is whether the statute gives a person of ordinary intelligence fair notice that his conduct is forbidden and punishable by certain penalties. That test, however, does not consist of a linguistic analysis conducted in a vacuum. It includes not simply the language of the provision itself, but related provisions as well, and especially the reality to which the provision is to be applied. The test here is whether a *physician* of ordinary intelligence would have understood, and would have been given fair notice by virtue of these provisions, that his conduct rendered him liable to a $200 penalty as to each patient. [at 37, 414 *A.*2d 1339]

New Jersey courts have rejected vagueness arguments attacking criteria no more definite than the one at issue. In *In re Com'r of Bank v. Parkwood Co.*, 98 *N.J.Super.* 263, 273, 237 *A.*2d 265 (App.Div.1967), the court found that the terms "incompetency" and "unworthiness" were adequate for judging the conduct of insurance agents and brokers. In *Moyant v. Paramus*, 30 *N.J.* 528, 552-553, 154 *A.*2d 9 (1959), a licensing standard requiring a finding of such "business and moral character" as deemed "necessary for the protection of the

public good" was held to be sufficiently definite. *And see State v. Rosenthal,* 559 *P.*2d 830, 835 (Nev.Sup.Ct. 1977), *app. dism.* 434 *U.S.* 803, 98 *S.Ct.* 32, 54 *L.Ed.*2d 61 (1977), in which the Supreme Court of Nevada, reversing a lower court which had overturned a gaming commission ruling, held that if the statutory standards were "inadequate legislative expressions," implementing regulations "would serve to cure the defect."

Over 20 years ago our Supreme Court acknowledged constitutional readjustment whereby

> . . . [I]n recent days we have attached greater significance to the presence of procedural and judicial safeguards against unreasonable and unwarranted agency action than we have to the presence of details in the statutory standards. *See Burton et al. v. Sills,* 53 *N.J.* 86, 91 [248 *A.*2d 521] (1968), *appeal dismissed,* 394 *U.S.* 812, 89 *S.Ct.* 1486, 22 *L.Ed.*2d 748 (1969); *State v. Owens-Corning Fiberglass Corp., supra* [100 *N.J.Super.* 366, 242 *A.*2d 21 (App.Div.1968), *aff'd* o.b. 53 *N.J.* 248, 250 *A.*2d 11 (1969)], 100 *N.J.Super.* at 385 [242 *A.*2d 21]; *Esso Standard Oil Co. v. Holderman,* 75 *N.J.Super.* 455, 474 [183 *A.*2d 454] (App.Div.1962), *aff'd,* 39 *N.J.* 355 [188 *A.*2d 599] *appeal dismissed,* 375 *U.S.* 43, 84 *S.Ct.* 148, 11 *L.Ed.*2d 107 (1963). [*Motyka v. McCorkle,* 58 *N.J.* 165, 178, 276 *A.*2d 129 (1971)]

The matter comes down to a response to the dispositive inquiry posed in *State v. Lashinsky, supra*:

> . . . The decisive question for purposes of this vagueness argument is whether the defendant was reasonably apprised, as a matter of common intelligence, in light of ordinary human experience, that his particular conduct was unlawful.[4] [81 *N.J.* at 18, 404 *A.*2d 1121]

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4 Of course, the Perlmans are not defendants in the criminal sense as was Lashinsky, and no one suggests that their conduct was unlawful. The principle is no different.

We are wholly persuaded that the potential key employee is reasonably apprised by the statute, as a matter of common knowledge, in the light of ordinary human experience, as to the kind of conduct necessary to satisfy the statute (or put another way, the kind of conduct which is likely to result in disqualification). He is reasonably apprised as well of precisely what will happen if he does not pass muster.

This being so we are content that there was no lack of fairness with respect to the Perlmans, whose sophisticated knowledge of the casino gaming industry and long-time experience with its standards and regulations was far from "ordinary." In fact, their plaint in this respect loses much of its thrust in view of the fact that whatever else it did or did not do, the Nevada Gaming Commission advised them of its decidedly negative reaction to the conduct which the New Jersey Casino Control Commission found offensive eight years later.

Coupled with this vagueness issue the Perlmans also urge that a "good character" criterion "allows [the Commission] to rely upon guilt by association." The brief for the corporations iterates this argument, in effect, and claims a due process violation, citing *Schware v. Board of Bar Examiners,* 353 *U.S.* 232, 77 *S.Ct.* 752, 1 *L.Ed.*2d 796 (1957). As we have indicated above, it is abundantly clear to us from the opinion of the Commission that the Perlmans were not rejected because of any "guilt" on their part in the criminal or *quasi*-criminal sense or because of their association with persons, some of whom, if not guilty, were almost universally thought to be. Rather, they were rejected, among other things, because, as we said above, of their apparent continuing insensitivity to the potential impact of those associations in this sensitive industry. The present protestations of the fact that those transactions were, at the time *"lawful* and *ethical"* (emphasis is the Perlmans') demonstrate that the sensitivity has not increased. The question was not then, and is not now, whether those transactions were lawful, or how lawful, or ethical, or how ethical. The question which the Perlmans failed to see then and, perhaps understandably, do not now acknowledge, is:

what of the impact of those transactions and associations upon the policies intended to be served by casino gaming regulation under legislative imprimatur? *Schware* reports that in that matter "[t]here is nothing in the record which suggests that Schware has engaged in any conduct during the past 15 years which reflects adversely on his character." 353 *U.S.* at 239, 77 *S.Ct.* at 756. That statement cannot be made for the Perlmans, if good character in the sense here appropriate is deemed to refer to conduct not potentially detrimental to the industry. In the context of the statutes, no other definition is reasonable. *Knight v. Margate, supra. Schware* and others like it are distinguishable.

Both appellants' briefs also argue that since the order of the Commission requires a termination of the Perlman relationship with CWI and its subsidiaries "in this or any other jurisdiction," as a condition of BRC licensing, it offends the Commerce Clause, *U.S.Const.*, Art. I, § 8, by imposing an unreasonable burden on interstate commerce. The fallacy in this argument is that the order is said to purport "to regulate the management of substantial non-New Jersey operations . . . and to limit the Perlmans' business activities outside of New Jersey," when in fact it does no such thing. It neither regulates CWI or any of its subsidiaries except BRC or the Perlmans, nor tells them what they must do. It only tells BRC, in terms completely in line with the statute and its purposes, the condition which must exist in view of its corporate connections, before it can enjoy the privilege of a casino license. No one will argue that New Jersey does not have a legitimate local public interest in determining who shall be thus licensed in New Jersey and under what conditions. We are satisfied this issue has no merit and warrants no further discussion.

We are agreed, however, that the legitimate state interests otherwise being served do not require or reasonably permit the requirement of disassociation of the Perlmans' personal interests from non-New Jersey subsidiaries of CWI which have no gaming activities. The State advances a so-called "percolating up" concern, theorizing that Perlman influence may work its way up the interstructure and manifest itself in CWI (and

thereafter BRC) affairs, despite the disassociation there. Such a result is not at all inconceivable. Nevertheless, we believe the effect thus projected would be sufficiently attenuated that its force would not exceed the influence the Perlmans might continue to exert as old and experienced friends, even after divestiture. We are satisfied that neither of these is susceptible to New Jersey regulation consistent with due process. It is not insignificant that the Commission continues to retain jurisdiction over its licensees. If a "Perlman effect" becomes manifest, the Commission is not powerless. *N.J.S.A.* 5:12-129.

Finally, the corporations argue that the evidence supporting the Commission's finding that Malnik was a person of unsuitable character was "irrelevant, inadmissible and legally insufficient." The argument is entirely frivolous. The protesting brief points out the relevance of "what the Perlmans knew about Malnik between 1971 and 1975." *N.J.S.A.* 5:12-107 a(6) takes care of the balance. See also, *N.J.A.C.* 19:42-2.6. *In re Toth,* 175 *N.J.Super.* 254, 418 *A.*2d 272 (App.Div.1980), cited by appellants, is of no avail to them. In the matter before us there was an ample residuum of legal and competent evidence to sustain the administrative decision. *Weston v. State,* 60 *N.J.* 36, 51, 286 *A.*2d 43 (1972).

Except respecting the requirement of divestiture as it applies to non-New Jersey nongaming subsidiaries of CWI, we affirm the administrative determination. We remand to the Casino Control Commission for recasting of the order consistent with the foregoing and for reasonable revision of the timetable. The stay imposed by the Supreme Court shall remain in effect pending the recasting of the order of the Commission and thereafter until further order of this court or the Supreme Court on motion. Other than with respect to the stay as noted, we do not retain jurisdiction.

APPENDIX C

Opinion of the New Jersey Casino Control Commission

STATE OF NEW JERSEY

CASINO CONTROL COMMISSION

Docket No. 80-CL-1

November 13, 1980

In the Matter of

THE APPLICATIONS OF BOARDWALK REGENCY CORPORATION AND THE JEMM COMPANY FOR CASINO LICENSES.

NEW JERSEY CASINO CONTROL COMMISSION

Joseph P. Lordi, Chairman
Martin B. Danziger, Vice-Chairman
Don M. Thomas, Commissioner
Carl Zeitz, Commissioner
Madeline H. McWhinney, Commissioner

APPEARANCES:

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For the Casino Control Commission:

R. Benjamin Cohen, General Counsel
Joseph A. Fusco, Special Counsel for Licensing

I.

INTRODUCTION

On September 1, 1978, Boardwalk Regency Corporation ("BRC") applied to the Casino Control Commission for a casino license. In accordance with the Casino Control Act ("the Act"), the Commission requested the Division of Gaming Enforcement ("Division") to conduct a comprehensive investigation into BRC's qualifications. While the investigation was in progress, BRC proceeded with its reconstruction and expansion of the former Howard Johnson's Regency Hotel. On April 30, 1979, with completion of its facility approaching, BRC formally requested issuance of a temporary casino permit which the Commission is authorized to grant upon the filing of certain corporate information, the institution of an appropriate voting trust agreement and the establishment of the suitability of the proposed casino hotel facilities. See *N.J.S.A.* 5:12-95.1. After conducting a hearing on this request, the Commission found that, subject to certain conditions, BRC met the requirements for a temporary casino permit. The Commission then issued such a permit which became effective on June 26, 1979. That permit expired at midnight on October 26, 1980. As noted, the statutory requirements for a temporary casino permit were limited to areas which did not concern the suitability of the applicant or other persons required to be qualified for a casino license.

As the landlord and lessor of the casino hotel facility, the Jemm Company ("Jemm") is required by Section 82 of the Act

to apply for and obtain a casino license. *N.J.S.A.* 5:12-82(c)(2). Jemm did apply for such license on or about February 26, 1979. In the usual course, the matter was referred to the Division for investigation.

On January 23, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Boardwalk Regency Corporation" (the "BRC Report"). Along with the BRC Report, the Division filed a "Statement of Issues" emphasizing several matters which the Division deemed significant. On February 1, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Jemm Company, a Partnership." These documents were submitted by the Division pursuant to its statutory responsibility to investigate the qualifications of each applicant and to provide all necessary information to the Commission. *N.J.S.A.* 5:12-76. Although they assist the Commission in focusing its inquiry into the qualifications of the applicants, these documents are not evidence of the matters stated therein. Nor did the Report and Statement of Issues initiate the present hearing. The Casino Control Act requires a hearing on every casino license application and each applicant must meet the statutory criteria regardless of the tenor of the Division's report. See *N.J.S.A.* 5:12-80(a) and -87(a).

In order to expedite the proceedings and to fairly permit the parties to prepare for the hearing, six (6) pre-hearing conferences were conducted. Those conferences resulted in six (6) pre-hearing conference orders delineating the factual matters which were to be the primary subjects of the hearing. Essentially, those subjects concern the areas described in the Division's reports. Further, the applicants and the Division have entered into extensive stipulations of fact relevant to those areas. These stipulations have been accepted by the Commission. As to any other factual matters not placed in issue nor actually litigated during the hearing, it must be assumed that such matters pose no cause for concern. In this regard, the Commission took notice of the fact that the applicants have to

date filed numerous documents which pertain to uncontested matters and which were not introduced at the hearing.

Sections 84 and 89(b) of the Act set forth the criteria which a casino license applicant and other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. *N.J.S.A.* 5:12-84 and 89(b). The clear and convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderance standard but somewhat less than the reasonable doubt requirement. Clear and convincing evidence should produce in the mind of the Commissioner a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, the applicant was obliged to present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. Further, the Act requires that four of the five Commission members must concur in any necessary finding for casino licensure. *N.J.S.A.* 5:12-73(d).

As noted, a casino license applicant must establish by clear and convincing evidence that it meets the criteria of Section 84 and that the persons who must be qualified meet the criteria of Section 89(b) for casino key employees. For BRC, a corporate applicant, the persons required to so qualify are described in Sections 85(c) and 85(d) of the Act. Under Section 85(c), the following persons connected with BRC must qualify:

(a) each officer;
(b) each director;

(c) each person holding any beneficial interest, direct or indirect, in the securities of the applicant corporation;

(d) any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of the corporation, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; and

(e) any lender, underwriter, agent or employee of the applicant corporation or other person whom the Commission considers appropriate for qualification.

Under Section 85(d) the officers, directors, lenders, underwriters, agents, employees and securities holders of Caesars, New Jersey, Inc. (the intermediary company) and Caesar's World, Inc. (the holding company) must qualify to the standards under Section 89, except residency. However, since both the intermediary company ("CNJ") and the holding company ("CWI") are publicly traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any person who is not significantly involved in the activities of BRC and who does not have the ability to control the holding company or the intermediary company or to elect one or more directors thereof.

As to Jemm, the partnership which leases the casino hotel facility to BRC, Section 85(e) of the Act requires the following persons to be qualified to the standards for casino key employees, except for residency:

(a) each person who directly or indirectly holds any beneficial interest or ownership in the partnership applicant;

(b) any person who in the opinion of the Commission has the ability to control the partnership applicant; and

(c) any person whom the Commission considers appropriate for qualification.

During the pre-hearing conferences, the Division submitted a list of persons whom the Division deemed required to be qualified for both BRC and Jemm. The Division also indicated those individuals to whom it interposed an objection and the grounds for such objection. These materials were provided to the Commissioners and the parties. The Commission found that there are thirty persons who must be qualified as part of the BRC application and eight persons who must be qualified as part of the Jemm application. At the conclusion of the hearing, the Division objected to four of the BRC "qualifiers," namely, Clifford S. Perlman, Stuart Z. Perlman, Jay E. Leshaw and William H. McElnea, Jr. No objection was interposed regarding any of the Jemm qualifiers.[1]

As to the licensure standards themselves, Sections 84 and 89(b)(2) establish essentially the same qualification criteria which must be established by clear and convincing evidence for the applicants and the persons to be qualified. The first affirmative qualification criterion is that of "financial stability, integrity and responsibility." *N.J.S.A.* 5:12-84(a); *N.J.S.A.* 5:12-89(b). The second criterion appears in Section 84(c) and Section 89(b)(2). Although the wording varies slightly between these sections, the thrust is the same. A casino licensee applicant or person required to qualify must demonstrate its "reputation for good character, honesty and integrity." *N.J.S.A.* 5:12-89(b)(2). The third criterion demands that the applicant or qualifying person possess "sufficient business ability and casino experience as to establish the likelihood" that the applicant will create and maintain "a successful, efficient casino operation" or that the qualifying person will achieve "success and efficiency in the particular position involved." *N.J.S.A.* 5:12-84(d); *N.J.S.A.* 5:12-89(b)(3). A fourth affirmative criterion applies only to the casino license applicant which must

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1 Prior to the hearing, the Division stated its opposition to Mark A. Geller, who resigned his position as vice-president for BRC's casino operations and who took a leave of absence from his office in CWI. Mr. Geller's qualifications are the subject of a separate proceeding and will be determined by the Commission apart from the instant matter.

establish the "integrity and reputation" of all financial investors or lenders whose investments or loans are related to the Atlantic City casino hotel project.[2]

As mentioned earlier, the Division filed investigative reports as to both the BRC application and the Jemm application. In addition, the Division submitted a "Statement of Issues" in which it enumerated 13 areas of concern covered by the BRC report. The Commission received evidence on these areas and considered that evidence in determining whether BRC had met the affirmative qualification criteria. However, certain "issues" as developed on this record simply were not of the same force and importance as others. The matters which truly concerned the Commission were those which are related in the opinions regarding the four challenged BRC qualifiers. With respect to the otherwise unmentioned issues, the Commission found on this record no reasons to seriously question the suitability of the applicants or persons to be qualified. Since the real difficulties with the BRC application concern the persons to be qualified, we now consider those individuals.

II.

PERSONS REQUIRED TO QUALIFY

A. CLIFFORD S. PERLMAN

Clifford S. Perlman who presently resides in Miami, Florida, was born on March 30, 1926, in Philadelphia, Pennsylvania and was educated in the Philadelphia public schools. After attending Temple University for a short time, he com-

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2 At the hearing, the Chairman distributed to the Commissioners and to the parties a proposed written instruction on the licensing criteria and the decisional process. After considering the exceptions filed by the parties, the Chairman modified the proposal in two respects. The written instruction, as modified, was adopted by the Chairman for the guidance of the Commission and the edification of the parties. It is not necessary to restate the instruction here since it is part of the record. Moreover, the meaning of the pertinent standards and their application to the contested matters in this case are apparent from the opinions of the Commission members herein.

pleted his undergraduate education at the University of Miami and proceeded to obtain a law degree from the same institution in 1951. He has been a member of the Bar of the State of Florida since 1951.

Caesars World Inc. ("CWI") was formed in 1958 as "Lum's Bar, Inc." by Clifford Perlman and his brother, Stuart, to operate a small restaurant in Miami Beach, Florida which the brothers had purchased in 1956. By 1969, the Perlmans had built the corporation into a publicly-held (over-the-counter) company which operated or franchised approximately 380 fast-food restaurants. The company also acquired in the late 1960's a Florida-based producer and distributor of processed meats (Dirr's Gold Seal Meats) and a chain of more than 100 retail discount stores (Dade Wholesale Products). On September 30, 1969, Lum's acquired Caesars Palace in Las Vegas, Nevada. Within the next two years, Lum's disposed of Dirr's Gold Seal Meats and Dade Wholesale Products and its fast-food restaurants. In December 1971, the name of the corporation was changed from Lum's to Caesars World. Clifford Perlman was the primary catalyst in changing the direction of the company from the fast-food business to the casino hotel business.

Caesars World Inc. is today a publicly traded corporation, the stock of which is listed on the New York and Pacific stock exchanges. The approximately 26,100,000 shares of the company are owned by about 70,000 shareholders. Through subsidiaries, CWI presently owns and operates Caesars Palace Hotel and Casino in Las Vegas, Nevada, Caesars Tahoe Hotel and Casino in Stateline, Nevada, and Boardwalk Regency Hotel and Casino in Atlantic City, New Jersey. Through other subsidiary companies, CWI owns real estate and operates a country club in southern Florida, operates three honeymoon resorts in the Pocono Mountain area of Pennsylvania, and owns a computer terminal manufacturing company based in New York. In fiscal 1980, the gross revenues of CWI exceeded $500,000,000.

Clifford Perlman is Chairman of the Board of Directors and chief executive officer of both CWI and Caesars New Jersey,

Inc. ("CNJ").[3] He is the largest single stockholder of CWI, owning approximately 2.4 million shares, or about 10% of the outstanding stock. In addition, he owns approximately 221,000 shares of CNJ, or about 1.4% of the outstanding stock of that company. Clifford Perlman clearly is today, and has been since the beginning, the acknowledged leader and prime mover of CWI.

By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Clifford Perlman is a person who must individually be qualified for approval as a casino key employee (except for New Jersey residence) in order for Boardwalk Regency Corporation ("BRC") to be eligible to hold a casino license. BRC therefore has the affirmative responsibility to establish by clear and convincing evidence Clifford Perlman's "financial stability, integrity and responsibility," his "good character, honesty and integrity," and his "business ability and casino experience."

With regard to Clifford Perlman, the bulk of the evidence presented to the Commission relates to the licensure criteria of "good character, honesty and integrity." To determine an individual's "good character, honesty and integrity," the Act requires the Commission to examine, among other factors, the individual's "family, habits, character, criminal and arrest record [if any], business activities, financial affairs, and business, professional and personal associates."

In an effort to meet its statutorily imposed burden, BRC produced a great deal of evidence in support of both the good reputation of Clifford Perlman and the good character, honesty and integrity of Clifford Perlman. Several witnesses testified as to Clifford Perlman's good reputation in the financial community, in the casino hotel industry and in the

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3 Mr. Perlman has been on unpaid leave of absence from his position with CWI and CNJ and has been prohibited from taking any management position with BRC since June 26, 1979, the effective date of the BRC temporary casino permit. Mr. Perlman agreed to this arrangement in response to concerns raised by the Division which was then continuing its investigation of Mr. Perlman's and CWI's dealings with Messrs. Malnik and Cohen.

communities where he lives and works. Most of these witnesses also testified as to his good character, honesty and integrity. Suffice it to say that the Commission has very carefully examined, considered and weighed all of this evidence.

The Division of Gaming Enforcement has recommended that this Commission find Clifford Perlman unsuitable for qualification. In support of its recommendation the Division has adduced evidence which it contends reflects adversely on the good character, honesty and integrity of Clifford Perlman. This evidence may be most conveniently considered in the context of the four major areas which were closely examined at the hearing.

1. ACQUISITION OF CAESARS PALACE

CWI's (then Lum's, Inc.) entry into the casino gaming business was marked by the purchase of Caesars Palace in 1969 for approximately $58 million. The Caesars Palace venture was largely the initiative of Clifford Perlman. It was Clifford Perlman who discovered the deal for the company and who established the purchase price at a multiple of earnings not to exceed $60 million.

At the time of acquisition, CWI retained prior management to run the casino operation without conducting a background study or investigation of any of the individuals, relying instead on their general reputation in the gaming community. One of these individuals was Jerome Zarowitz, the Director of Casino Operations, responsible for the day to day operations of the casino. He was then not required by the Nevada authorities to be licensed as a casino key employee. Although not a record owner of the Palace, Mr. Zarowitz received $3.5 million in cash upon the consummation of the acquisition from the former owners and received further monies on a deferred compensation plan, which CWI was obligated to fund.

Mr. Zarowitz had a known criminal record and by the latter part of 1969, was considered by Clifford Perlman unsuitable to operate the casino at Caesars Place. While Mr. Zarowitz was still in charge of the casino, Clifford Perlman was aware of

reports concerning Mr. Zarowitz' attendance at a so-called "little Appalachia" meeting of reputed organized crime members in Palm Springs in 1965. And Clifford Perlman was also aware that the Nevada Gaming Control Board had expressed concerns about Mr. Zarowitz' suitability for licensure and that his employment at Caesars Palace might have to be terminated. Notwithstanding this knowledge, CWI retained Mr. Zarowitz in his same executive capacity after the purchase settlement on September 30, 1969, until his resignation in April, 1970. Moreover, he was allowed to occupy an apartment at Caesars Palace on a complimentary basis for a period of time after his termination of employment. And, CWI replaced him with Sanford Waterman, on Mr. Zarowitz' own recommendation.

Between May 1, 1969, shortly after CWI entered into the agreement to purchase Caesars Palace, and September 30, 1969, when that purchase was completed, Caesars Palace suffered a loss of $932,266 before taxes, while continuing to be operated by the previous owners including Mr. Zarowitz. During the same period in the prior year of 1968, Caesars Palace had a profit before taxes of $2,230,014. Although professing concern over this drop in casino win, CWI accepted, without any independent investigation, the explanation tendered by Mr. Zarowitz and other personnel of the former owners that losses during the settlement period were due to patron win at the baccarat tables and, generally, to the fortunes of gaming. Indeed, CWI did nothing to confirm Zarowitz' explanation. Neither its Board of Directors nor management raised, or even considered, the possibility of an independent, outside audit of the records for the operation of the Caesars Palace casino during the settlement period. To do any such investigation, according to Clifford Perlman, would have disturbed the delicate negotiations then in progress between CWI and the previous owners over restructuring the financing aspects of the deal, occasioned by CWI's inability to adhere to its original plan of financing. In Clifford Perlman's words, "If I had accused them [the prior owners] of stealing, we would not have bought the hotel."

On December 12, 1970, the Federal Bureau of Investigation, acting under the supervision of Harold E. Campbell, Jr., then Special Agent in Charge of the Bureau's Nevada Regional Division, and having cause to believe the existence of an illegal interstate gambling operation, executed search and arrest warrants at Caesars Palace. In the course of the search, the agents uncovered funds in lockboxes listed to Mr. Zarowitz ($1,100,000), Elliot Price ($325,000) and Sanford Waterman ($135,000). Mr. Waterman and Mr. Price, who were casino executives at Caesars Palace at the time, were arrested as a result. Apparently, neither Clifford Perlman, who took personal charge of the Palace after this occurrence, nor anyone else on behalf of CWI confronted Mr. Zarowitz, Mr. Price or Mr. Waterman regarding this event or made any independent attempt to ascertain the source of these monies.

On January 27, 1971, the Securities and Exchange Commission ("SEC") ordered an examination and investigation into the possibility that CWI did not receive a substantial portion of the results of the casino proceeds of Caesars Palace for the summer of 1969 because the prior operators had been "skimming" the casino revenues during that period. In the course of its hearings in this matter, the SEC subpoenaed, among others, the former principal owners of Caesars Palace and its key casino employees, including: William Weinberger, Sr., who at the time was President of Caesars Palace; Harry Wald, then Secretary-Treasurer of Caesars Palace (now Executive Vice President, Secretary and Director of Desert Palace, Inc., a wholly-owned subsidiary of CWI), Albert Faccinto (now Senior Vice President with Desert Palace, Inc.), Jerry Gordon and Bert Grober. All these individuals refused to testify, most invoking their constitutional privilege against self-incrimination. This fact came to the attention of Clifford Perlman who, once again, made no attempt to interview any of his employees about their possible knowledge that others may have been sharing in Caesars Palace revenues through skimming.

One of these employees, Jerry Gordon, had been indicted on March 25, 1971, along with Samuel Cohen, Meyer Lansky, Morris Lansburgh and others for income tax evasion arising

from an alleged skimming operation at the Flamingo Hotel, a neighboring casino. Although professing shock over the indictment, Clifford Perlman never inquired of Gordon whether he knew of possible skimming at Caesars Palace under its prior ownership. Quite to the contrary, when Nevada gaming authorities sought Gordon's dismissal from Desert Palace, Inc., by reason of his indictment, Clifford Perlman directed William Weinberger (then President of Desert Palace, Inc.) to intervene in the matter. After a series of correspondence between Weinberger and the Nevada Gaming Control Board, Mr. Gordon was allowed to take a temporary leave of absence.

Another employee of Caesars Palace who had pled the Fifth Amendment before the SEC was Joel Snow. Mr. Snow had been rehired at Caesars Palace one year after his termination for a $1,000 shortage in the baccarat pit. He also was never asked about the drastic drop in casino winnings during the 1969 acquisition settlement period.

From the foregoing, certain conclusions are self-evident. Despite an awareness of Mr. Zarowitz' criminal conviction and his general unsuitability in the eyes of Nevada gaming officials, CWI, through Clifford Perlman, retained him in a position of responsibility and authority within the casino, allowed him to live on the premises rent free after his resignation, accepted without further inquiry his explanation for casino losses and followed his recommendation that he be replaced by Sanford Waterman. Unquestionably, Mr. Zarowitz' record as well as the sensitivities exhibited by Nevada gaming authorities should have disabused Clifford Perlman of any such trust and reliance. In the face of an official SEC investigation into the possibility of skimming at Caesars Palace under its prior owners—a charge which strikes at the heart of the regulatory concerns—CWI's apparent lack of diligence in ascertaining the truth of this allegation is disturbing, especially since individuals with possible relevant knowledge remained in CWI's employ. Two of these employees, Joel Snow and Jerry Gordon, in particular, should have given CWI cause for concern—indeed, Jerry Gordon at this time had just been indicted for an alleged skimming operation at the nearby casino, the Flamingo.

Of course, the nature and relevance of these events must be considered in the context in which they occurred. Clifford Perlman and CWI were new to the casino gaming industry. Nevertheless, *at the very least,* the facts outlined above relating to the acquisition of Caesars Palace should have raised Clifford Perlman's consciousness concerning the sensitive nature of this industry and concerning the regulatory process under which it operates.

2. SKY LAKE NORTH

In the late spring of 1971, Alvin I. Malnik, a principal along with Samuel E. Cohen of Comal Corp., approached CWI President Melvyn Chasen about the possibility of CWI purchasing property in Dade County, Florida known as Sky Lake North. A previous overture to this effect had been rejected by Clifford Perlman in 1970. The Sky Lake property consisted of about 623 acres including a country club, lakes and approximately 325 acres of developable land owned by Comal. In the 1971 offer, the price was set by Malnik at $23 million. More specifically, CWI was to assume an existing $10 million mortgage debt to the Central States, Southeast and Southwest Areas Pension Fund (Teamsters Pension Fund) and undertake a $13 million purchase money mortgage to Comal. These terms appeared attractive to Clifford Perlman.

At a July 1971 meeting at Sky Lake, Mr. Malnik along with Samuel Cohen presented their proposal to certain representatives of CWI including Clifford and Stuart Perlman, William McElnea, Jay Leshaw, Bertin Perez and CWI's outside counsel, David Bernstein of Rogers & Wells. Also by this time, Mr. Malnik was proposing to sell the stock of Comal to CWI, rather than having CWI purchase the property outright, and seeking as part of the transaction, to acquire rights to CWI stock.

Sometime later in July 1971, CWI's Board of Directors met and considered the proposed transaction. Certain aspects of the deal were discussed including the reputations of Mr. Malnik and Mr. Samuel Cohen. The Board was told: that Mr. Malnik

had been accused, in a book entitled *Lansky* by one Hank Messick, of being a close associate of Meyer Lansky; that Mr. Malnik denied such association; and that federal law enforcement authorities apparently believed Mr. Malnik was involved in organized crime. They were told that Mr. Malnik had once been indicted for tax fraud, but that he had received a directed verdict of acquittal, and that he had never been convicted of a crime. Board members were also informed of Mr. Cohen's violation of the Commodity Exchange Act.

At this meeting, David Bernstein expressed his concern over entering this transaction, given Mr. Malnik's reputation. As outside counsel, Mr. Bernstein recommended seeking the Justice Department's approval before consummating the deal. The Board rejected this advice, however, as a bad precedent, and as a poor business move. CWI's directors felt that the reputations of Mr. Malnik and Mr. Cohen should not preclude the company from the undertaking at hand and consequently decided to proceed with the transaction. Mr. Bernstein's concerns remained unabated but, he was eventually dissuaded by Clifford Perlman from again addressing the issue before the Board.

All of CWI's outside directors were not made aware of every important aspect of Mr. Cohen's background at the time of the Board's July 1971 approval of the Sky Lake transaction. In fact, Mr. Cohen had been indicted together with Meyer Lansky and others in March 1971, for income tax evasion arising from an alleged casino skimming operation at the Flamingo Hotel in Las Vegas. Clifford Perlman was aware of Meyer Lansky's reputation. Clifford Perlman also knew of the Flamingo skimming indictment involving Messrs. Cohen, Lansky and others when it was returned in March 1971. Indeed, one of Mr. Perlman's employees, at Caesars Palace, Jerry Gordon, had been charged as a co-defendant in the same indictment. Stuart Perlman knew of the Flamingo skimming indictment at the time of its filing, as did Jay Leshaw, since it was extensively reported in the news media of Miami where both resided. However, Mr. Cohen's then pending indictment with Meyer Lansky and Caesars Palace employee Jerry Gordon was not

discussed with William McElnea and the other outside directors of CWI. Clifford Perlman testified that he did not consider it a sensitive issue. Stuart Perlman testified that he "assumed" all directors knew, even though the subject of Mr. Cohen's indictment was never raised or discussed at the same Board meeting in which Mr. Cohen's conviction for a commodities violation was disclosed. Jay Leshaw testified that at the time of the Board meeting he focused on the architectural and land development aspects of the deal rather than on the character and backgrounds of those with whom his company was entering into a business relationship.

Based on the foregoing, the following findings are inescapable. In 1971, CWI's Board of Directors was faced with the prospect of entering into a major business relationship with two men of admittedly controversial and questionable reputations. This presented sufficient concern to certain directors that the topic was raised and considered at a formal Board meeting. And it was of particular concern to CWI's counsel, David Bernstein. Apparently, however, the Board was satisfied with Mr. Malnik's denial of an association with Meyer Lansky and was unpersuaded by the nature of the allegations. On the basis of the information disclosed at that meeting, the Board approved the deal after weighing the various considerations before it.

The most pertinent piece of information, however—Mr. Cohen's then pending indictment with Meyer Lansky in a casino skimming scheme—was not brought to the attention of the outside directors by Clifford Perlman, Stuart Perlman or Jay Leshaw. Just four months earlier, Mr. Cohen had been indicted with Meyer Lansky and others for a crime rooted in an alleged casino skim. Its relevance to the discussion at hand was apparent. Had this fact been disclosed at the meeting it might well have brought the Lansky connection into sharper focus. The media allegations concerning Mr. Malnik and Mr. Cohen, then thought to be baseless, might not have been so readily dismissed. Mr. Bernstein's unheeded admonition might not have been so lightly regarded. Indeed, William McElnea testified that the fact of Mr. Cohen's indictment would have

been dispositive of the issue for him if he had known about it. It was, according to his business ethic, a fact which should have been fully disclosed to the Board for its consideration. It was not; and Mr. Perlman has provided no good reason why.

As the chairman of a publicly held corporation engaged in the heavily regulated business of casino gaming, Clifford Perlman should have approached Sky Lake with caution and circumspection, impelled by a sense of duty to his shareholders and to the regulatory authorities. This sense of duty both demanded, at the very least, full disclosure to the Board of Directors. It should have compelled further inquiry, such as a confrontation with Mr. Cohen himself or communication with law enforcement or regulatory agencies. But apparently none of this was done.

3. Cricket Club

In the early summer of 1972, Clifford Perlman became personally involved in a real estate investment with Alvin Malnik and Samuel Cohen's two sons, Joel and Alan Cohen. This project involved the purchase of the partially completed Cricket Club, a high-rise condominium complex consisting of approximately 220 units in Miami, Florida. Calvin Kovens was chosen to be the general contractor for the completion of the condominium project. Mr. Kovens, along with Teamsters Union President Jimmy Hoffa, had been convicted in 1964 for fraud and conspiracy in using $1 million in Teamsters Pension funds to finance a real estate venture. Although aware of this conviction, Clifford Perlman's only objection to using Mr. Kovens' construction company was based on the personal relationship between Mr. Malnik and Mr. Kovens. When the costs of the condominium project began to exceed the financing made available for it, Samuel Cohen lent the Cricket Club substantial sums in excess of $6 million with which to complete the undertaking. Close to $2 million was also borrowed from Comal Corporation. Clifford Perlman knew that Mr. Cohen was lending money to the Cricket Club.

Clifford Perlman's equity interest in the Cricket Club was $10,000. Although asserting he was to be a passive investor,

and this in part due to Mr. Malnik's reputation, all decisions involving the business or property of the corporations formed to undertake the condominium project required the consent of Clifford Perlman. Moreover, the four partners in this venture were required to indemnify each other against liabilities in excess of the percentage interest of each in the stock of the corporation. Clifford Perlman's interest was one-third.

Clifford Perlman soon became the guarantor of some substantial institutional loans. As a condition to a $13 million loan from the Carner Bank of Miami Beach to the Cricket Club, Clifford Perlman and his partners were required to guarantee (1) completion of the project, (2) payment of all costs thereof and (3) repayment of the construction loan. In October 1972, Mr. Perlman, Mr. Malnik, the Cohen sons and Mr. Kovens executed a performance bond and a labor and material payment bond, each in the amount of $6,100,000. More guarantees would follow.

Sometime in November 1972, Philip Hannifin, then Chairman of the Nevada Gaming Control Board (NGCB), personally approached Clifford Perlman concerning his involvement with Alvin Malnik in the Cricket Club. At this meeting, Mr. Hannifin voiced his concerns over Mr. Perlman's association with an individual of Mr. Malnik's reputation. As a consequence of what Mr. Hannifin had said, Mr. Perlman committed to extricate himself from the Cricket Club if Mr. Malnik would not institute a libel suit against Hank Messick, the author of *Lansky*.

However, Clifford Perlman remained in the Cricket Club even after Mr. Malnik informed him that he would not file a libel suit. Citing the fact that he was still committed as a co-guarantor on several substantial loans to the Cricket Club, Clifford Perlman chose to continue his involvement in the project, guaranteeing new loans throughout its construction period and lending sums of money to the corporation.

The Cricket Club project represents yet another and more direct involvement by Clifford Perlman in the business world of Alvin Malnik. Mr. Perlman's partnership with Mr. Malnik and Mr. Cohen's sons in this venture developed into one of

long duration, a fact which should have been evident from the outset. His series of guarantees on loans to the Cricket Club bound Mr. Perlman so firmly to the arrangement that even when he later wanted to extricate himself, he found it impossible to do so. To this day, Mr. Perlman remains obligated on $280,000 of these guarantees after paying $386,000 to be relieved of guarantees of $3 million, a telling indication of his once intricate and deep involvement in the matter.

Prior to his entry into the Cricket Club, Clifford Perlman neither consulted with Harold Campbell, CWI's then recently hired Director of Corporate Security, nor inquired as to Mr. Malnik's background nor sought confirmation of the allegations made against him. He was apparently content with Mr. Malnik's denials. Neither did Mr. Perlman notify the Nevada regulatory authorities as to his contemplated venture with Mr. Malnik.

When Mr. Hannifin first approached Mr. Perlman about this matter in November 1972, Mr. Perlman assumed the defense of Mr. Malnik. This was indeed a curious position given Mr. Perlman's earlier concern that Mr. Malnik was not licensable in Nevada, his awareness of Mr. Malnik's reputation and his desire to become only a passive investor in the Cricket Club partly due to this reputation. But not only did Mr. Perlman defend Mr. Malnik, he proposed an alternative to outright severance which permitted him a means to remain in the project as Mr. Malnik expressly desired. By the time this alternative was no longer viable, Clifford Perlman found himself inextricably tied to the financial health of the project.

Much has been argued as to whether Mr. Perlman's conduct in this regard was violative of an official directive to the contrary. The issue, however, is not so easily defined. The fact that such a violation may not have occurred does not preclude this Commission from viewing Mr. Perlman's conduct negatively. In November 1972, Philip Hannifin, the Chairman of the Nevada Gaming Control Board, communicated his concerns to Clifford Perlman. As a result of this meeting, Mr. Perlman understood that he had made a commitment to Mr. Hannifin. He subsequently, in his own words, "definitely"

breached that commitment. These circumstances cause us deep concern about Clifford Perlman's attitude toward the regulatory process.

D. COVE HAVEN

According to Mr. Perlman's testimony, he chanced to meet Alvin Malnik on an airplane in December 1974. Mr. Malnik inquired whether Clifford Perlman or his company could provide an opportunity to invest a substantial sum of money. Clifford Perlman first suggested that Mr. Malnik pay for improvements to the Sky Lake Country Club and accordingly increase CWI's rent for the country club. Mr. Perlman's proposal would have resulted in an increased cash drain for CWI rather than in the cash relief his company was supposedly then seeking. When Mr. Malnik declined that offer, Mr. Perlman suggested a sale and leaseback of CWI's two honeymoon resorts located in the Poconos.

Mr. Malnik offered to purchase the properties for $15 million and to lease the properties back to CWI at an annual rental of 13% to 15% of the purchase price. Mr. Perlman, in turn, presented the matter to the CWI Board for resolution. There were no negotiations over the price set by Mr. Malnik. CWI's Board of Directors gave conceptual approval to the plan and, because of an apparent conflict of interest occasioned by Clifford Perlman's Cricket Club involvement, assigned CWI President William McElnea to conclude the transaction. His conflict of interest, however, did not bar Clifford Perlman from ultimately voting to approve the transaction.

On February 20, 1975, CWI entered into a sale and leaseback of its Cove Haven and Paradise Stream resorts with Cove Associates, a Florida partnership comprised of Alvin Malnik and Samuel Cohen's sons, Joel and Alan. The assets of these properties were sold for $15 million. Prior to the consummation of the deal, CWI learned that Cove Associates, through Mr. Malnik, was borrowing the $15 million at 9% interest from the Teamsters Pension Fund. As part of the arrangement, CWI

agreed to lease back the two Pocono properties for 20 years at an annual rent of $2,130,000 (14.25% of the purchase price). Each of the leases gave CWI certain options to renew and to purchase, and obligated CWI to make certain improvements.

Three related aspects of the Cove Haven sale and leaseback transaction are worthy of particular note as they reflect on the character of Clifford Perlman. The first aspect concerns his willingness in late 1974 to lead his company into yet another business entanglement with Alvin Malnik and the sons of Samuel Cohen. The second aspect concerns his willingness to do this despite his November 1972, meeting with Philip Hannifin and his commitment to Mr. Hannifin to disassociate from Mr. Malnik and the Cricket Club. The third aspect concerns his failure to disclose all relevant information to the full CWI Board during its consideration of the Cove Haven transaction. Specifically, Clifford Perlman did not advise the full CWI Board of his November 1972, conversation with Philip Hannifin prior to the Cove Haven approval. Clifford Perlman presumed that the independent directors knew of the Hannifin meeting even though the Perlmans and Mr. McElnea made no disclosure and the subject was neither raised nor considered at the Board meeting when the Cove Haven transaction was discussed.

Also noteworthy is the fact that CWI's Corporate Security Chief, Harold Campbell, was not asked to review the Cove Haven transaction as to suitability. At that time company policy was that all significant transactions were, in the discretion of the head of the subsidiary, to be submitted for security review.

In late 1972, Harold Campbell had been asked to investigate Mr. Malnik's background and had reported his results to Clifford Perlman. While Mr. Campbell refused to express an opinion in his testimony before us as to whether Alvin Malnik was associated with organized crime, both Clifford Perlman and William McElnea recalled that Mr. Campbell had previously been of the opinion that Mr. Malnik was so associated.

At about the same time as his investigation of Mr. Malnik (late 1972), Campbell also reported to Clifford Perlman on the

subject of honorary memberships at the Skylake Country Club. In response to Mr. Perlman's inquiry, Mr. Campbell advised:

> Many of the other Teamsters officials possessing Honorary Memberships have been in frequent business and social contact with top organized crime figures throughout the country. Whether one agrees or not, the Central States Pension Fund has in recent years been described in the news media as the "bankroll of the Mafia." Rightly or wrongly, many Mafia figures have obtained loans from this fund and even more importantly, many top Mafia figures have been in a position to arrange for loans from the fund for others, sometimes on the basis of friendship and at other times for a substantial fee.

Interestingly enough, both the source of Mr. Malnik's funds for the $15 million purchase price of Cove Haven—namely the Teamsters Pension Fund—and the 9% interest rate at which the money was borrowed were known to CWI in advance of the sale-leaseback agreement.

Once again, in the absence of any credible explanation presented in this record, we are left with a serious question. Why did Clifford Perlman, in late 1974, lead his company into its second (and his third) business entanglement with Alvin Malnik, especially in light of his November 1972 discussion with the Chairman of the Nevada Gaming Control Board?

Conclusions as to Clifford Perlman

The facts outlined above simply do not square with the positive testimony adduced as to the good character, honesty and integrity of Clifford Perlman. Stated bluntly, this Commission is unable to declare that Clifford Perlman may be trusted to control a company which seeks licensure to operate a casino in this jurisdiction. This determination flows primarily from three considerations:

(1) the associations with Alvin I. Malnik and Samuel E. Cohen which Clifford Perlman led CWI to engage in or which he engaged in personally;

(2) the attitude of Clifford Perlman with regard to the regulatory process; and

(3) the candor with which Clifford Perlman dealt with his fellow Directors on the CWI Board.

Based on the substantial credible evidence in the record as a whole, this Commission finds Samuel E. Cohen to be a person of unsuitable character and unsuitable reputation. Following indictment by the federal authorities together with Meyer Lansky and others, he was convicted and incarcerated for filing a false income tax return on facts relating to the skimming of proceeds from the Flamingo casino in Las Vegas, Nevada. Previously he had been fined for violating the Commodity Exchange Act. Mr. Cohen's alleged involvement with Meyer Lansky and others in the Flamingo skimming indictment received widespread publicity in the Miami area in 1971.

Based on the substantial credible evidence in the record as a whole, this Commission finds Alvin I. Malnik to be a person of unsuitable character and unsuitable reputation. As to his character, the evidence establishes that Mr. Malnik associated with persons engaged in organized criminal activities, and that he himself participated in transactions that were clearly illegitimate and illegal. As to his reputation, he has been identified repeatedly in the news media as a close business associate of Meyer Lansky and other reputed organized crime figures. Moreover, federal law enforcement authorities have long believed Mr. Malnik to be involved in organized crime.

Prior to the 1971 Sky Lake transaction, Clifford Perlman knew of Mr. Malnik's unsavory reputation and Mr. Cohen's pending indictment for casino skimming. Yet Mr. Perlman led his company into a direct, intense, long-lasting association with these men. He himself became personally involved in the 1972 Cricket Club transaction directly and intimately with Mr. Malnik and Mr. Cohen's two sons in a second ongoing association. And, in the late 1974 Cove Haven transaction he led his company into a direct, intensive, continuing association with Mr. Malnik and Mr. Cohen's sons.

Although Samuel Cohen was not a direct participant in either the Cricket Club project or the Cove Haven agreement,

the evidence plainly indicates that he was indirectly interested in both. Mr. Cohen lent large sums of money to the Cricket Club and Mr. Perlman knew of those loans. Moreover, as part of the Cove Haven transaction, CWI requested and received a deferral of the payments due on the Sky Lake obligations. Since Mr. Malnik and Samuel Cohen were the principals in the Sky Lake deal, it is possible that some of the Cove Haven proceeds were being channelled to Mr. Cohen. Thus, Mr. Perlman exhibited no great reluctance to continuing involvement, direct or indirect, with the indicted and later convicted Mr. Cohen as well as the suspect Mr. Malnik.

Beyond Mr. Perlman's willingness to engage in repeated and enduring relationships with Messrs. Malnik and Cohen, no reasonable explanation has been provided for the failure of Mr. Perlman to provide the CWI directors with material information regarding those relationships. Specifically, Mr. Perlman chose not to disclose the fact of Mr. Cohen's pending indictment when the board voted on the Sky Lake proposal. Second, Mr. Perlman made no mention of Mr. Hannifin's disapproval of Mr. Malnik before the board was presented with the Cove Haven offer. These omissions contradict the characterization of Mr. Perlman as a man of candor and forthrightness. Further, they raise disturbing questions as to whether Mr. Perlman was so anxious to consummate the transactions that he refused to jeopardize board approval by full disclosure. These questions have simply not been answered.

BRC contends that these transactions may have been public relations mistakes but that they did not actually jeopardize the integrity of gaming operations. While it may be true that Mr. Malnik and Mr. Cohen were not literally in control of the casino, their financial arrangements provided them with an obvious opportunity to exercise economic leverage against CWI. In point of fact, CWI experienced cash shortages which prompted it to obtain relaxation of its Sky Lake obligation from Mr. Malnik and Mr. Cohen. At the same time, CWI was increasing its indebtedness to Mr. Malnik and the sons of Samuel Cohen. Thus, Mr. Perlman in a very real sense delivered his company into the hands of Mr. Malnik, Samuel Cohen and Mr. Cohen's sons.

From the foregoing and from the entire record, this Commission is not able to find by clear and convincing evidence that Clifford Perlman possesses the good character, honesty and integrity demanded by the Casino Control Act. Accordingly, Clifford Perlman is not qualified.[4]

B. STUART Z. PERLMAN

Stuart Z. Perlman, who presently resides in Miami Beach, Florida and maintains a residence in Longport, New Jersey, was born on September 20, 1927, in Philadelphia, Pennsylvania. He was educated in the Philadelphia public schools and attended LaSalle College for one year. In 1956, along with his older brother, Clifford, he purchased the first Lum's restaurant.

Today, Stuart Perlman is Vice Chairman of the Board of Directors of both CWI and CNJ. He is also the second largest stockholder of CWI, owning approximately 1.7 million shares, or about 8% of the outstanding stock. In addition, he owns approximately 153,000 shares of CNJ, or about 1% of the outstanding stock of that company. By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Stuart Perlman is a person who must individually be qualified for approval. The applicant, BRC, and Stuart Perlman have produced evidence in support of the qualification of Stuart Perlman all of which has been carefully examined, considered and weighed. The Division has recommended that this Commission find Stuart Perlman unsuitable for qualification.

Most of the evidence relevant to the suitability of Stuart Perlman has already been stated with regard to Clifford

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4 The Division also asserted that Mr. Perlman had supplied false or misleading information as to when he first learned of Mr. Cohen's indictment. In his testimony, Mr. Perlman admitted that he acquired such knowledge before the Sky Lake transaction. It seems that Mr. Perlman's recollection was not as clear in an interview which he gave to the Division in April 1979. In any event, the Commission does not find Mr. Perlman to be disqualified on this basis. See *N.J.S.A.* 5:12-86(b).

Perlman and is incorporated here by reference. In July 1971, with full knowledge of the pending indictment against Samuel Cohen, Meyer Lansky and others, with full knowledge of the questionable reputations of Samuel Cohen and Alvin Malnik, without discussing the Cohen indictment with CWI's outside directors, and against the advice of CWI's outside counsel, Stuart Perlman voted in favor of entering the Sky Lake transaction. Moreover, during the period between December, 1974, and February 20, 1975, CWI was considering the Cove Haven sale and leaseback transaction. At that time, Stuart Perlman, who was aware of the substance of the November 1972 conversation between Philip Hannifin and Clifford Perlman, voted to enter into the Cove Haven transaction. Additionally, Stuart Perlman did not discuss or bring to the attention of CWI's outside directors the Hannifin conversation.

By virtue of his own involvement in these events, Stuart Perlman was obliged to answer serious questions about his character, honesty and integrity. More particularly, these questions flow from his associations with Alvin Malnik and Samuel Cohen, his attitude toward the regulatory process, and his apparent lack of candor in dealing with the other CWI directors.

Furthermore, it is clear from the record that Stuart and Clifford Perlman are more than just brothers. Since 1956, when they jointly purchased the first Lum's restaurant, they have been close business associates. They own, respectively, 8% and 10% of the outstanding stock of publicly traded CWI. They participate jointly in several other business ventures. Indeed, the testimony indicates that for the past several years Stuart Perlman has handled all of Clifford's personal finances, even to the point of signing Clifford's checks and making investments for him. Thus, there is a substantial commonality of economic interests as well as a close blood relationship between the two men.

In light of all of the above considerations, and after carefully weighing these matters and viewing them in the context of the entire record, the Commission finds that BRC has failed to

meet the affirmative responsibility of establishing the good character, honesty and integrity of Stuart Perlman. Accordingly, Stuart Perlman is not qualified.

C. JAY E. LESHAW

Jay Leshaw is clearly a qualifier as to the casino license applicant. He is now a senior vice president and a director of Caesars World, Inc., and president and a director of three of its subsidiaries: Sky Lake Development, Inc.; California Club, Inc.; and Corporate Real Estate Equities, Inc. He is also a shareholder in Caesars World, Inc. (owning 30,000 of its approximately 26.3 million shares or 0.001%).

The Division's objection to Mr. Leshaw's qualifications is based primarily upon his role, while a Caesars World, Inc. inside director and vice president, in the 1971 approval of the Sky Lake transaction. At the time of the transaction, Mr. Leshaw knew of Mr. Malnik's reputation and of Mr. Cohen's indictment with Meyer Lansky in Florida less than four months earlier in the Flamingo "skim" prosecution. No open discussion with the outside directors of these facts had occurred at that board meeting. However, when thirty-one months later Caesars World, Inc. voted to restructure the Sky Lake lease, Mr. Leshaw appears to have been unaware of the November 1972 discussions between Philip Hannifin and Clifford Perlman concerning Mr. Hannifin's reservations as to the propriety of Mr. Perlman's personal business dealings with Mr. Malnik in the Cricket Club.

Jay Leshaw was born in 1927, educated at the University of Miami and presently resides in Coral Gables, Florida. About 1963, while in the construction business, he met Clifford Perlman and began doing work for Lum's, Inc. which was designing, locating, financing, constructing and eventually franchising its fast food restaurants. In 1967 he joined Lum's, Inc. as an executive vice president and became one of its directors. By that date he had assumed a primary responsibility for the company's restaurant business and thereafter maintained it until July 1971 when its restaurant operations were

sold. In later 1968, Melvin Chasen joined the company as an executive vice president and, in mid-1970, became its president.

Less than three months after divesting itself of the restaurant operations, Lum's, Inc. closed on its long-term lease of the Sky Lake development property. Mr. Leshaw then became, and has to the present remained as, president of the Caesars World, Inc., subsidiary responsible for this asset. Since then, Mr. Leshaw has maintained his offices at the property. Initially, before the south Florida condominium economy slowed, he actively refined the development program as to the property. In 1977, however, CWI retained California land developer Jerry Snyder to design a more effective sales program for the project. Currently, more than 95% of the units have been sold. It was in 1978 that the name of the country club there was changed to the California Club.

On balance, Mr. Leshaw's activities are not such as to prevent his qualification. His role in Caesars World, Inc., has never been one of setting policy or deciding as to acquisitions. It rather has been confined to the design and development of South Florida real estate operations, at first the restaurant business and more recently the condominium property. He has always been located in South Florida. Although that locale is admittedly the base for Messrs. Lansky, Malnik and Cohen, Mr. Leshaw's responsibilities to CWI are quite remote from the concerns and sensitivities of Nevada and its casino gaming industry. Mr. Leshaw was not the source of the Malnik or Cohen associations nor were the associations ever personal to him. Plainly, as an employee of Caesars World, Inc., he was subject to the policies set by the Perlmans. It is true that in 1971, he did not discuss with CWI's outside directors the fact of the Samuel Cohen "skim" indictment. Although this failure is hardly praiseworthy, it is understandable in light of the relative positions of the Perlmans and Mr. Leshaw. Were such an omission to occur today under the New Jersey regulatory system, a different result might follow. On this record, though, the Commission is satisfied that Mr. Leshaw has established his "good character, honesty and integrity" by clear and convincing evidence. Accordingly, Jay E. Leshaw is found to qualify

as a director, officer and shareholder as to this applicant for a New Jersey casino license.

D. WILLIAM H. McELNEA, JR.[5]

1. Investment Banker and Outside Director

William H. McElnea, Jr., is the president and chief operating officer of the holding company, Caesars World, Inc., and the intermediary company, Caesars New Jersey. He is separately a member of each of the eight-member boards of directors of Caesars World, Inc., Caesars New Jersey, and the Boardwalk Regency Corporation. He is a shareholder of Caesars World, Inc. in which he holds 420,000 shares, or 1.6% of the stock, and a shareholder of Caesars New Jersey, in which he has 58,970 shares, or 0.4% of the 15.98 million outstanding shares. He has been associated with CWI and its predecessor, Lum's, Inc., since 1966, first as a financial advisor, later as an outside director, and since late 1972 as the president of CWI, a position that has produced his current, thorough involvement in the corporation and its subsidiaries. Undoubtedly, Mr. McElnea is a person required to meet the standards, except residency, for a casino key employee license. See *N.J.S.A.* 5:12-85(c) and (d).

Significant points about Mr. McElnea reside in the evidence concerning two of CWI's associations. The first is with the Central States Southeast and Southwest Teamsters Pension Fund of Chicago, Illinois, a relationship that began in 1969 with the acquisition of Caesars Palace Hotel and Casino. The second is the association between CWI and Alvin Malnik and Samuel Cohen, who are reputed associates of Meyer Lansky, of Miami, Florida, the same city where Mr. Malnik and Mr.

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5 Only Commissioners Thomas, Zeitz and McWhinney join in this opinion regarding Mr. McElnea. Chairman Lordi separately concurs in the determination to find Mr. McElnea qualified. Vice-Chairman Danziger dissents from this determination.

Cohen reside and do business. This association remained in place until recent days through the corporation's involvement in the Sky Lake development, and with Cove Associates in the Pocono Mountain properties, and began at least as early as June 1971.[6]

The associations with the Teamsters Pension Fund, and with Malnik and Cohen were active and growing until December 10, 1975. The first, with the Pension Fund, deepened because of the second, that is the association with Mr. Malnik and Mr. Cohen, but particularly with Mr. Malnik. The Nevada Gaming Commission and the Nevada Gaming Control Board made their joint position on the Malnik association clear to Caesars World, Inc. on December 10, 1975, and again on April 13, 1976, when the corporation was ordered not to associate with persons of unsavory or notorious reputations.

From that point, the expansion of the two associations halted and a corporate effort was begun to sever them. Only a beginning has been made until now, but it is doubtful that beginning could or would have been initiated without the effort of Mr. McElnea. The qualification of Mr. McElnea depends upon his role in these CWI associations, which the Attorney General, through the Division of Gaming Enforcement, finds is such as to prevent his qualification.

The evidence does not raise questions as to the reputation of Mr. McElnea. It does put before the Commission matters concerning Mr. McElnea's treatment of the associations with Mr. Malnik and Mr. Cohen, and the Pension Fund. Of course, it is the applicant who has the burden to establish by clear and convincing evidence the traits of good character, honesty and integrity. The evidence must enable the Commission to believe that the requisite character, honesty and integrity have been demonstrated.

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6 At the conclusion of the hearing, BRC presented a plan to create and fund two trusts which would pay when due the continuing obligations of CWI as to the Cove Haven transaction and the Sky Lake acquisition. This plan was accepted by the Commission as adequately insulating the companies from Mr. Malnik and Mr. Cohen.

William H. McElnea, Jr., was born in New Jersey in 1922, reared in Connecticut, and educated at Dartmouth College from which he received his bachelor's and masters degrees. In 1955 after having worked for seven years in Wall Street banks, he joined the small New York investment banking firm of Van Alstyne, Noel and Co., where he specialized in corporate financing.

In 1966, shortly after he met Clifford Perlman, Mr. McElnea and the Van Alstyne firm accepted the Florida-based Lum's, Inc., as a client. When, in 1967, Lum's became a publicly traded company, Mr. McElnea was made an outside director. He remained as a partner in Van Alstyne, Noel and Co. His status as an outside director and investment banker continued for six years. Effective August 31, 1972, Melvin Chasen resigned as president of Caesars World, Inc. Two months later, on November 1, 1972, William McElnea succeeded Mr. Chasen as president of the corporation. Mr. McElnea continued as a director, and relocated to the corporation's headquarters in Los Angeles. He is and since that day has been the chief operating officer of CWI.

In 1966 when Mr. McElnea began his association with Lum's as its investment banker, it was a growing fast food restaurant and franchising firm, based in South Florida. In 1967 through the offices and talents of Mr. McElnea the company undertook and completed its first major financing. This public offering may seem a pittance today when measured against the magnitude of CWI's current financings, but in 1967 it represented a milestone in its corporate development. At the time, Stuart Perlman was president of the corporation and his brother, Clifford Perlman, was its principal executive officer. They had then owned the company for ten years.

In early 1969 Clifford Perlman began discussions which led to the September 30, 1969, acquisition by Lum's of the then three-year-old, 680-room Caesars Palace Hotel and Casino in Las Vegas, Nevada. As part of the transaction, Lum's assumed an $18.1 million mortgage obligation to the Teamsters Pension Fund.

In December, 1969, Lum's acquired the Pennsylvania honeymoon resort called Cove Haven, and fourteen months later acquired the nearby honeymoon resort called Paradise Stream. In July, 1971, Lum's divested itself of the restaurant and franchising operations, and by then had also divested itself of the Dirr's Meat Processing and Distribution Company, and the chain of Eagle Army-Navy retail outlet stores. In June, 1971, discussions between Mr. Malnik and Lum's President Melvin Chasen led to negotiations in July 1971, which resulted on October 14, 1971 in Lum's closing with the Comal Corporation on the 623-acre condominium development property in North Miami, Florida, known as Sky Lake North. Comal Corporation, which had acquired the property 10 months earlier, was owned equally by Mr. Malnik and Mr. Cohen. The property was then subject to a $10 million Teamsters Pension Fund loan. On December 16, 1971, Lum's Inc. changed its named to Caesars World, Inc.

Mr. McElnea was not the cause of the association of CWI with the Teamsters Pension Fund, a relationship which originated in the 1969 acquisition of Caesars Palace, described on the record as being initiated by Clifford Perlman. Nor did Mr. McElnea bring the corporation into contact with Mr. Malnik and Mr. Cohen, a development attributed to Melvin Chasen and Clifford Perlman in the 1971 acquisition of Sky Lake. As its investment banker, Mr. McElnea was the servant of the policy and business decisions made by his client, and by its chief executive, Clifford Perlman. Becoming an outside director required Mr. McElnea to take positions and record his votes on matters of corporate policy formulated by the company's executives, most notably the Perlmans.

In the corporate world in the period of 1969 to 1971 the role and obligation of outside directors of publicly traded corporations were not perceived as strictly or as solemnly as in 1980. More deference was given at that time to policy determinations made by corporate executives, such as Clifford and Stuart Perlman.

CWI's associations with Mr. Malnik, Mr. Cohen and the Pension Fund before late 1972 do not reflect on William

McElnea's "good character, honesty and integrity," or his fitness to participate now in the New Jersey gaming industry. The associations were not personal as to McElnea. They were business relationships arranged by the corporate lenders who were members of the Miami community. During this time, McElnea worked and resided in New York and Connecticut.

2. PRESIDENT OF CAESARS WORLD, INC.

The role of William McElnea changed on November 1, 1972, when he became president of CWI. As president he became, after Clifford Perlman, the corporation's leading executive, but guided heavily by the policies developed by Clifford Perlman, and transmitted by the corporation chairman to the board of directors.

In his first three years as president, Mr. McElnea led CWI in restructuring the Sky Lake financial arrangement with Comal Corporation from a lease into a purchase. This finally made it possible for CWI to begin undertaking development of the property, which had been delayed three years by the transaction over which Mr. Perlman and Mr. Chasen had presided in 1971. In February, 1975, through a sale and leaseback of the Cove Haven and Paradise Stream resorts with Cove Associates, CWI fell headlong into a new association with Mr. Malnik and the Teamsters Pension Fund. This time, Mr. Cohen's two sons, rather than Mr. Cohen himself, were part of the deal. Again the transaction was brought to CWI by Clifford Perlman. There is also some evidence that CWI considered, at about the time it made the sale and leaseback, a refinancing of its overall corporate debt.

Following the transaction with Cove Associates, the Securities and Exchange Commission ordered a private investigation of CWI's corporate dealings with Mr. Malnik. The SEC examined both the Sky Lake and Cove Associates transactions, and also Clifford Perlman's private dealings with Mr. Malnik in the Cricket Club venture. On November 10, 1975, the Los Angeles Times published a front page story under the headline, "Caesars Palace Firm Under Investigation." As noted, the Nevada gaming authorities followed swiftly on December 10,

1975, and April 13, 1976, first with an admonition and subsequently with an order directing CWI not to expand its associations with Mr. Malnik, and to refrain from associating again with persons of unsavory or notorious reputation.

It appears from the record that such compliance efforts as CWI began to make then and has made until now flow from William McElnea. After a prolonged—and the Division claims too long—time the corporation was able to sever its insurance ties with the notorious Allen Dorfman, and through him, with United Founders Insurance Corporation. These ties were forged not by Mr. McElnea but by his predecessor as CWI president, Melvin Chasen. Mr. McElnea, clearly, was the driving force in the severance. If he tempered his drive because of considerations stemming from the ongoing relationships with the Pension Fund, this tempering must be seen against the backdrop of his concerted effort to arrange new, conventional, sound, institutional financing for the corporation. He has succeeded. Where the Perlmans brought Mr. Malnik and the Teamsters Pension Fund to Caesars World, Mr. McElnea has brought the Chemical Bank, the services of E.F. Hutton, and now the Aetna Insurance Company, among others. No evidence suggests new or expanded associations with Mr.Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975 by CWI, a bright comparison to the dalliance of Clifford Perlman in his effort to sever himself from the Cricket Club and in his flirtation with that investment even after Nevada had made its message eminently clear.

The sources of the $138 million committed to date by CWI to the Boardwalk Regency project in Atlantic City demonstrate amply the new kind of financing that Mr. McElnea has sought and found. Those sources include $47 million from major financial institutions, $28 million from obligations undertaken to former owners of realty, and $63 million from such internal financial wellsprings as bank lines, public offerings, and operating revenues.

The November 1975 Los Angeles Times news story alerted two members of CWI's Board of Directors to Mr. Malnik's reputation, and to the fact that Philip Hannifin of the Nevada

Gaming Control Board had talked to Clifford Perlman in November 1972 and left him with an understanding that Mr. Perlman was to end his Cricket Club involvement.

It is undisputed that Mr. McElnea knew about Mr. Malnik by the end of 1974 and the beginning of 1975, when the Cove Associates deal was presented and consummated. He also knew by then the substance of the Hannifin-Perlman discussion. He did not share his knowledge with the two uninformed directors, Manuel Yellen and John Polite. That he should have, he knows now, and this Commission knows. But seen against the background of Clifford Perlman's disproportionate influence in the corporation, and the division of labor and interest between Mr. Perlman, the man who decided what would happen, and Mr. McElnea, the man Perlman charged with making it happen, it is clear that Mr. McElnea could rightfully infer that such disclosure was always Mr. Perlman's responsibility.

There is no doubt that sometime in 1975, after the Cove Associates deal, but before the November 10 Los Angeles Times story, both Mr. Perlman and Mr. McElnea discussed with Mr. Malnik a sale and leaseback of Caesars Palace Hotel. The weight of the record is clear and convincing that when Alvin Malnik had deals to propose to Caesars World, Inc., he went to Clifford Perlman. Whatever the extent of those discussions with Mr. Malnik, and in the testimony there was only one, Mr. Perlman would have been the source.

Caesars World, Inc. in this hearing has brought before this Commission a group of young, able, honest management professionals, and new outside directors of measurable business experience and probity, who have been attracted to the company under the presidency of Mr. McElnea, and who serve on his management team. Their presence is further testimony to his business ability. It also underscores the increasing tenacity of his commitment to put not only time but distance between his corporation and the questionable beginnings of Nevada gaming.

3. FINDING AS TO WILLIAM H. MCELNEA, JR.

In judging the good character, honesty and integrity of William McElnea, as in making such judgment upon any applicant, the Commission must examine the whole man, and the entire circumstances in which he performed. As in all areas of human endeavor, there is in the regulatory process never a situation absent some scintilla, some particle of doubt. But on the basis of the whole record, on his accomplishments at Caesars World, the performance of the corporation in New Jersey under his leadership since May 30, 1979, and the sureness of his understanding of the regulatory process for five years, the Commission can and does find clearly and convincingly that Mr. McElnea is a man of good character, honesty, and integrity and one suitable to hold a license, and to conduct gaming affairs in the State of New Jersey. He is thus found to qualify as an officer, director, and shareholder as to this casino applicant.

The finding that Mr. McElnea is qualified and suitable for licensure puts a heavy responsibility upon him. Placed in the perspective of the Commission's other findings as to the unsuitability of the chairman and vice chairman, the leadership of Caesars World, Inc., right now, and as a practical matter, appears to fall squarely upon Mr. McElnea. It will be for him to decipher the meaning of that leadership, and to demonstrate it. In making this decision as to Mr. McElnea the Commission reposes a trust in him. It is fully mindful of the circumstances and expects he will be too.

E. OTHER PERSONS REQUIRED TO QUALIFY

In accordance with Sections 85(c) and 85(d) of the Act (*N.J.S.A.* 5:12-85(c) and (d)), the Commission and the Division agreed that there were 30 persons required to qualify as part of the BRC application. The 26 individuals who were not the subject of a Division challenge and about whom no grounds for rejection appear are the following:

1. HOWARD B. BACHARACH, a resident of Ventnor, New Jersey is 39 years of age and employed by BRC as Vice-President of Administration.

2. HAROLD B. BERKOWITZ, a resident of Los Angeles, California, 61 years of age, is an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

3. LARRY L. BERTSCH, a resident of Somers Point, New Jersey, is 41 years of age and employed by BRC as Treasurer and Vice President of Finance.

4. PETER G. BOYNTON, a resident of Linwood, New Jersey, is 36 years of age, a Director of BRC and, a Senior Vice President of BRC.

5. ALFRED J. CADE, a resident of Linwood, New Jersey, is 49 years of age, a Director of BRC and a Senior Vice President of BRC.

6. HOWARD E. CAMPBELL, JR., a resident of Las Vegas, Nevada, is 59 years of age and employed by Caesars World, Inc., as Vice President of Security.

7. JOHN H. CONNORS, a resident of Glen Ridge, New Jersey, is 56 years of age and employed by Caesars World, Inc., as Assistant Vice-President of Security.

8. DUANE M. EBERLEIN, a resident of Tarzana, California, is 40 years of age and is employed by Caesars World, Inc., as Controller and Chief Accounting Officer and by Caesars New Jersey, Inc., as Controller and Vice President.

9. MAXWELL J. GOLDBERG, a resident of Margate, New Jersey, is 55 years of age, an employee of BRC in the Office of the President and a Director of BRC.

10. WILLIAM E. HAINES, a California resident, is 58 years of age and is employed by both Caesars World, Inc., and Caesars New Jersey, Inc., as Vice President of Finance.

11. DAVID P. HANLON, a resident of San Juan Capistrano, California, is 34 years of age and is employed by Caesars

World, Inc., and by Caesars New Jersey, Inc., as Vice President of Operations.

12. STEPHEN F. HYDE, a resident of Linwood, New Jersey, is 34 years of age, is an Executive Vice President and Chief Operating Officer of BRC and a Director of BRC.

13. J. TERRANCE LANNI, a resident of Margate, New Jersey and California, is 37 years of age. Although he recently resigned as Director and Chief Executive Officer of BRC, Mr. Lanni still is employed as Executive Vice President of both Caesars World, Inc. and Caesars New Jersey, Inc.

14. JAMES A. LENZ, a resident of Longport, New Jersey, is 45 years of age and is employed by BRC as the Casino Manager.

15. CYRIL PATRICK MCCOY, a resident of Parsippany and Absecon Highlands, New Jersey, is employed by BRC as Corporate Controller.

16. JAMES J. NEEDHAM, a resident of Bronxville, New York, serves as an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

17. MILTON NEUSTADTER, a resident of Margate, New Jersey, 55 years of age, is an employee of BRC in the Office of the President and is a Director of BRC.

18. BERTIN J. PEREZ, a resident of Encino, California, although recently resigned as Group Vice President of Caesars World, Inc., continues to serve as a consultant to Caesars World, Inc.

19. CARL A. PROPES, a resident of Beverly Hills, California, is 52 years of age and is employed as Vice President of Administration by both Caesars World, Inc., and Caesars New Jersey, Inc.

20. BERNARD W. RESNICK, a resident of New Jersey, is 55 years of age and is employed by BRC as the Assistant Casino Manager. It should be noted that the Commission previously licensed Mr. Resnick as a casino key employee.

21. DONALD D. ROBERTSON, a resident of Burbank, California, is 43 years of age and is employed as Treasurer of both Caesars World, Inc. and Caesars New Jersey, Inc., in addition to being employed as Assistant Treasurer of BRC.

22. MEYER P. SCHWEITZER, a resident of New York, New York, is 69 years of age and serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc.

23. RICHARD H. SHEEHAN, JR., a resident of Encino, California, is 35 years of age and is employed by both Caesars World, Inc. and Caesars New Jersey, Inc., as Secretary and Vice President of Law, in addition to being employed by BRC as Corporate Secretary.

24. WILLIAM P. WEIDNER, a resident of Atlantic City, New Jersey, is 35 years of age and is employed by BRC as Vice President of Marketing.

25. LARRY J. WOOLF, a resident of Brigantine, New Jersey, is 35 years of age and is employed by BRC as Assistant Vice President of Casino Operations. It should be noted that the Commission previously licensed Mr. Woolf as a casino key employee.

26. MANUEL YELLEN, a resident of Pacific Palisades, California, serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc., in addition to being employed as a consultant to Caesars World, Inc.

In addition to considering the qualifiers for the Boardwalk Regency Corporation application for a casino license, the Commission has also considered the qualifiers for the Jemm Company based upon its application for a casino license to be the owner and lessor of the casino hotel facility. See *N.J.S.A.* 5:12-82(b). The Jemm Company is a New Jersey general partnership consisting of five partners all of whom are the legal owners of a partnership interest and thereby required to be considered as qualifiers pursuant to *N.J.S.A.* 5:12-85(e). Additionally, three of the five partners hold their respective partnership interest in trust for their wives. Accordingly, the wives of

these three partners hold a beneficial interest in the Jemm Company and thereby are also required to be considered as qualifiers pursuant to *N.J.S.A.* 5:12-85(e).

It should be noted that the Division did not interpose an objection to the suitability of any of the eight qualifiers of the Jemm Company. Those eight qualifiers are the following:

1. ALBERT A. TOLL, a resident of Pennsylvania and Florida, holds as trustee for his wife, Sylvia S. Toll, a 29.16% partnership interest in the Jemm Company.

2. SYLVIA S. TOLL, the wife of Albert A. Toll, is the beneficiary of the 29.16% partnership interest indicated immediately above.

3. JOSEPH TOLL, a resident of Margate, New Jersey, holds, as trustee for his wife, Evelyn Toll, an 18.75% partnership interest in the Jemm Company.

4. EVELYN TOLL, the wife of Joseph Toll, is the beneficiary of the 18.75% partnership interest indicated immediately above.

5. EDWARD BERON, a resident of Margate, New Jersey, holds, as trustee for his wife, Edna Beron, an 18.75% partnership interest in the Jemm Company.

6. EDNA BERON, the wife of Edward Beron, is the beneficiary of the 18.75% partnership interest indicated immediately above.

7. MILTON NEUSTATDER, a resident of Margate, New Jersey, holds a 16.67% partnership interest in the Jemm Company. As previously indicated, Mr. Neustatder is also a qualifier of Boardwalk Regency Corporation in that he is employed by that applicant in the Office of the President in addition to serving as a director of that corporation.

8. MAXWELL GOLDBERG, a resident of Margate, New Jersey, holds a 16.67% partnership interest in the Jemm Company. As previously indicated, Mr. Goldberg is also a qualifier of Boardwalk Regency Corporation in that he is employed by

that applicant in the Office of the President in addition to serving as a director of that corporation.

Having considered all of the information supplied by each of the qualifiers and by the Division of Gaming Enforcement, the Commission is satisfied that each of the named individuals meets the statutory standards required of a person who must qualify as part of a casino license application.

III.

FINDINGS AS TO COMPLIANCE WITH OTHER LICENSING REQUIREMENTS

In addition to those areas discussed above, the Commission was required to make other findings in order to issue a casino license, even though these areas were not the subject of a dispute between the parties. The Commission accordingly made the following findings with reference to these remaining areas:

1. That the applicants have established to the satisfaction of the Commission that the facility and its location are suitable and that neither the Atlantic City patron market nor the overall environment nor its economic, social, demographic, competitive or natural resource conditions will be adversely affected by the facility, as required by *N.J.S.A.* 5:12-84(e); provided, however, that the conditions attached to the temporary casino permit relating to the facilities (nos. 2 through 13) remain in effect until further order of the Commission.

2. That Boardwalk Regency Corporation and the Jemm Company together own in fee all the land on which the approved hotel is situated; that the Jemm Company as landlord leases the entire approved hotel facility and land thereunder directly to Boardwalk Regency Corporation as tenant; that both Boardwalk Regency Corporation and the Jemm Company are eligible and required to hold separate casino licenses in accordance with *N.J.S.A.* 5:12-82(a), (b) and (c).

3. That the lease agreement entered into by Boardwalk Regency Corporation and the Jemm Company is in writing and has been filed with the Commission; that the term thereof exceeds 30 years; that it concerns the entire approved hotel building and the land thereunder; that it contains a fixed-sum buy-out provision conferring upon Boardwalk Regency Corporation as lessee the right to acquire the entire interest of the lessor in the event said lessor is found to be unsuitable; that it contains a provision for the payment to the Jemm Company of a percentage of casino revenues; and that said lease is approved as conforming to the requirements of *N.J.S.A.* 5:12-82(c)(5) and (6).

4. That Boardwalk Regency Corporation and the Jemm Company shall be jointly and severally liable for all acts, omissions or violations of the Casino Control Act by either Boardwalk Regency Corporation or the Jemm Company as required by *N.J.S.A.* 5:12-82(c)(9).

5. That the approved hotel contains a total of 130,714 square feet of qualifying public space including 77,781 square feet of dining, entertainment and sports space and 27,052 square feet of kitchen support facilities and thereby exceeds the minimum qualified public space requirements set forth in *N.J.S.A.* 5:12-83.

6. That the approved hotel contains 503 qualifying sleeping units of an average size of 400 square feet and thereby exceeds the minimum qualifying sleeping units requirements set forth in *N.J.S.A.* 5:12-27 and 83(a).

7. That the approved hotel contains a single casino room of 48,630 square feet which conforms to the limitation set forth in *N.J.S.A.* 5:12-6 and 83(d).

8. That Boardwalk Regency Corporation has agreed to afford an equal employment opportunity to all prospective employees in accordance with an affirmative action program approved by the Commission and consonant with the provisions of the "Law Against Discrimination" as required by *N.J.S.A.* 5:12-134(b); it is to be noted, however, that the

applicant did not in a timely and diligent fashion insure that its construction contractors would offer equal employment opportunity to all persons employed in the construction of the Boardwalk Regency Hotel and Casino.

9. That the applicants, except as otherwise previously found herein with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence the integrity and reputation of, as well as the adequacy of, all financial sources which bear any relation to the casino proposal, as required by *N.J.S.A.* 5:12-84(b).

10. That both applicants have established by clear and convincing evidence their financial stability, integrity and responsibility as required by the provisions of *N.J.S.A.* 5:12-84(a).

11. That the applicants, except as otherwise previously found with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence their good reputation for honesty and integrity as required by the provisions of *N.J.S.A.* 5:12-84(c).

12. That Boardwalk Regency Corporation has established by clear and convincing evidence that it has sufficient business ability and casino experience as to establish the likelihood of creation and maintenance of a successful, efficient casino operation as required by the provisions of *N.J.S.A.* 5:12-84(d).

13. That Boardwalk Regency Corporation is a wholly-owned subsidiary both of the intermediary publicly-traded holding company, Caesars New Jersey, Inc., which is, in turn, approximately 86% owned by the parent publicly-traded holding company, Caesars World, Inc., and that both said companies have registered with the Commission as required by *N.J.S.A.* 5:12-85(b)(2).

14. That Boardwalk Regency Corporation has complied with the corporate filing and securities ownership transfer requirements set forth in *N.J.S.A.* 5:12-82 and 85.

IV.

CONCLUSION

The Commission has reviewed the entire record in light of the policies, standards and requirements of the Casino Control Act. As to the Jemm Company, the Commission is satisfied that the entity and the eight individual qualifiers have met the statutory criteria for Jemm to receive a casino license as the owner-lessor of the Boardwalk Regency Hotel and Casino. Accordingly, an appropriately limited casino license will issue to the Jemm Company.

As to the Boardwalk Regency Corporation, the Commission finds that, subject to any conditions expressed herein, the entity itself meets the applicable statutory requirements. With regard to the persons who must each qualify as part of the BRC application, all but two of the 30 named individuals have demonstrated their suitability and are qualified. For the reasons stated above, however, Stuart Perlman and Clifford Perlman have failed to establish by clear and convincing evidence that they each possess the good character, honesty and integrity demanded by the Act. *See N.J.S.A.* 5:12-85(d) and -89(b)(2).

Section 85(d) of the Act clearly states that "no corporation which is a subsidiary shall be eligible to *receive or hold* a casino license unless each holding or intermediary company" separately would meet certain requirements applicable to the applicant corporation. (*N.J.S.A.* 5:12-85(d)) (emphasis added). Under the referenced requirements, each officer, each director, each holder of beneficial interest in corporate securities, each person able to control the corporation or elect a majority of the board of directors, and every "other person whom the commission may consider appropriate for approval or qualification" must meet the standards, except residency, for a casino key employee license. *N.J.S.A.* 5:12-85(c). Since Stuart Perlman and Clifford Perlman do not meet those standards, the Act mandates denial of the license if the Perlmans continue to be persons required to qualify. Moreover, since BRC has

been operating a casino under a temporary casino permit, the Act unequivocally directs that upon denial of the license "and notwithstanding the pendency of any appeal therefrom, the commission shall appoint and constitute a conservator to, among other things, take over and into his possession and control all the property and business of the temporary casino permittee relating to the casino and the approved hotel." *N.J.S.A.* 5:12-130.1(b).

While the Commission recognizes its obligation to fulfill these statutory dictates, the question arises whether any alternative to denial of the license and imposition of the conservatorship would be lawful and appropriate. Quite obviously, no alternative is viable if either of the Perlmans continues to be a person required to qualify. Thus, the question becomes whether the Commission can fashion conditions precedent and subsequent to remove the licensing impediment.

Anticipating this question, the Commission requested both the applicant and the Division to address the legal issues involved. This request was made following summations on October 15, 1980. Subsequently, both parties submitted legal memoranda. Although their positions differ as to the type and extent of the conditions which the Commission could impose, both sides agree that the Commission possesses the authority to issue a casino license appropriately conditioned so as to eliminate the obstacle otherwise created by the existence of unacceptable qualifiers. This Commission concludes that such authority does exist. See *N.J.S.A.* 5:12-75 and -105.

Use of this authority to condition casino licenses with respect to unsuitable persons must be sparing and exceedingly cautious. It must be certain that such conditions will truly avoid the evils perceived by the Legislature and will provide a fully adequate substitute for the statutorily preferred procedure of denying the license and, in cases such as the present one, appointing a conservator. Of course, the conditions must remove the unacceptable individual from any of the categories of persons required to be qualified. *N.J.S.A.* 5:12-85(c). In particular, the conditions must warrant the conclusion that the individual is no longer a person "whom the commission may

consider appropriate for approval or qualification." *Id.* Even then, there should appear good reasons why the public interest would be better served through conditional licensure then through license denial and appointment of a conservator.

In the instant matter, acceptable conditions have been formulated which both satisfy the policies of the Act and advance the public interest. By its choice of the conditional licensure alternative, the applicant agrees to the Commission's findings and further agrees either: (1) to irrevocably and completely separate the Perlmans from the corporate family or (2) to withdraw from casino operations in New Jersey. However, this Commission realizes that these results could not have been achieved between October 23, 1980, when the Commission announced its findings and offered the conditional licensure alternative, and midnight October 26, 1980, when the BRC temporary casino permit was to expire. This realization prompts us to consider a short, definite interim period during which the applicant and the Perlmans may decide which of the two alternatives will be chosen and how the chosen alternative will be implemented. Of course, the Perlmans' control over CWI, CNJ and BRC must be minimized during the interim. Thus, as a component of the conditional license, the applicant must agree that the Perlmans take an unpaid leave of absence from any positions with the three companies, refrain from exerting any influence over the corporations' activities and neither vote their stock nor receive any dividends therefrom. These preliminary requirements were also announced to the applicant on October 23, 1980.

Since we now find these preliminary measures have been timely taken and since the applicant has now committed itself to choose one of the two permanent alternatives during the 30 day interim period, the Perlmans will not be deemed qualifiers during such period.

It is on the commitment of the applicant to comply with the stated conditions that our extraordinary decision is founded. Through this pledge, the State of New Jersey and its casino industry are spared the uncertainty of protracted challenges to the Commission's decision. Of course, the applicant gains the

advantage of retaining control of the casino and of making the determination as to what course of action it will pursue in response to the Commission's findings. Derivatively, the State is spared the trouble and expense of directing a conservatorship. Moreover, by virtue of the applicant's decision to accept the Commission's findings and to elect between two clearly defined options, the applicant is far less likely to be influenced by the interests of its unqualified founders. Once the decision is made, the Perlmans will either be segregated from the corporate group in a permanent fashion or the corporate group will begin to disengage from New Jersey. If necessary, the Commission will then demand further safeguards as part of the implementation plan. Thus, the proposal is an acceptable alternative to the denial of the license with the attendant conservatorship and an order granting to Boardwalk Regency Corporation an appropriately conditioned license will be entered.

NEW JERSEY CASINO CONTROL COMMISSION

s/ JOSEPH P. LORDI, CHAIRMAN
Joseph P. Lordi, Chairman
(except as to Part II D)

s/ MARTIN B. DANZIGER, VICE CHAIRMAN
Martin B. Danziger, Vice Chairman
(except as to Part II D)

s/ DON M. THOMAS, COMMISSIONER
Don M. Thomas, Commissioner

s/ CARL ZEITZ, COMMISSIONER
Carl Zeitz, Commissioner

s/ MADELINE H. MCWHINNEY, COMMISSIONER
Madeline H. McWhinney, Commissioner

Dated: November 13, 1980

Chairman LORDI, concurring:

I join in all aspects of the Commission's decision in this matter. I take this opportunity only to discuss certain facts bearing upon the qualification of William H. McElnea, Jr. (See Part II D of the Commission's opinion). Rather than repeat the biographical and background information contained in the Commission's opinion, I will focus on those areas which I believe are important to a consideration of Mr. McElnea's suitability.

I.

In order to understand the role played by William McElnea in the development of Caesars World, Inc. over the years, it is important to emphasize the fact that, from late 1968 to 1972, Melvin Chasen served as a principal corporate executive. In 1967, in addition to adding Mr. McElnea to its Board of Directors, Lum's, Inc., also added Melvin Chasen as an outside director. In October 1968, Mr. Chasen became its executive vice president and, on April 23, 1970, its president. On August 31, 1972, Mr. Chasen resigned as president and left Caesars World, Inc.

After eight years in the cigarette vending business in New York, Mr. Chasen in 1963 relocated to Miami and began operating a similar business there. At about that time he came to know Alvin Malnik. In late 1970, Mr. Malnik asked Mr. Chasen if he was interested in the Sky Lake North property, which was owned by Comal Corporation whose principals were Mr. Malnik and Samuel E. Cohen. After discussing the matter with Clifford Perlman, they both decided that Lum's, Inc., was not interested. Seven or eight months later, however, when Mr. Malnik renewed Comal's offer, Mr. Chasen and Clifford Perlman had changed their minds. It was during this period that, after golfing with Teamsters Pension Fund officials, Frank Fitzsimmons, Allen Dorfman and Alvin Baron at Sky Lake, Mr. Chasen learned that the Fund which held a $10 million mortgage on the property would not object to Lum's, Inc., as "tenants" of Comal Corporation.

On October 14, 1971, Lum's, Inc., "closed" on the property. Following the closing, Mr. Chasen requested that Lum's, Inc., financial officer Bertin Perez review its group health insurance plan and give Mr. Dorfman's Chicago based insurance brokerage firm an opportunity to make a proposal for the insurance business. Seven months later, on June 1, 1972, Caesars World, Inc.'s group insurance was placed through Mr. Dorfman's Amalgamated Insurance Agency Services with the United Founders Insurance Company, replacing Massachusetts General as its carrier. Almost six years later, February 1, 1978, United Founders was replaced as CWI's carrier by the Equitable Life Insurance Company.

On December 10, 1971, also shortly after the Sky Lake closing, Mr. Dorfman wrote to Mr. Chasen requesting that Fund officials be given honorary memberships by Caesars World, Inc. at the Sky Lake Country Club. This request also was accommodated by Mr. Chasen.

Several months later an application dated June 1, 1972, was prepared on behalf of Caesars World, Inc., for an $18.7 million loan from the Teamsters Pension Fund. The application recited the purpose of the loan as development of the Sky Lake property and the construction of a "fantasy tower" at Caesars Palace. The loan application, however, apparently was never actually submitted to the Fund.

During the first six years (1966 to 1972) of his fourteen year association with the company, while Mr. Chasen was in charge of administration, Mr. McElnea was its investment banker and an outside director. During Mr. Chasen's tenure, Caesars World, Inc. underwent a dramatic change in its corporate "personality." Prior to 1969, it was a publicly traded over-the-counter Florida based fast-food restaurant and franchising company with a meat packing subsidiary and a discount chain store subsidiary. Between 1969 and 1972, however, it completely divested itself of these Florida holdings and acquired two Nevada casino hotels, two Pennsylvania honeymoon resorts and a large Florida condominium development property. It also, in 1969, shortly after the acquisition of Caesars Palace, became listed on the New York Stock Exchange.

The role of William McElnea also significantly changed from this initial 1966-1972 period as its investment banker and "outside" director to the more recent 1972-1980 period of his presidency. Judgments as to his suitability as a qualifier must give consideration to this fact. As the Commission's opinion observes, Mr. McElnea was not the source of the company's associations with either the Teamsters Pension Fund (which Clifford Perlman initiated through the 1969 acquisition of Caesars Palace) or with Messrs. Malnik and Cohen (which Melvin Chasen originated through the 1971 acquisition of Sky Lake). It is also important to recognize that as its investment banker, he was subject to the policy and business decisions made by his corporate client and its chief executive Clifford Perlman. In sum, at the time that the associations between the corporation and Mr. Malnik, Mr. Cohen and the Fund were made firm, Mr. McElnea was not an executive of the company.

It is noteworthy that the transactions with Messrs. Malnik, Cohen and the Fund between 1969 and the present, do not, when separately examined, appear to have been illegal in either a civil or criminal sense. Nor, standing alone, do they seem to have been unethical. Neither the associations nor the transactions seem to have technically or expressly violated any Nevada Gaming Commission or Gaming Control Board regulation or directive, although express suggestions of concern by Nevada regulators did appear as early as October 1972. Similarly, neither the associations nor the transactions appear to have been disapproved by the Securities and Exchange Commission prior to its private order of investigation into the association with Mr. Malnik filed in September 1975. Consequently, it must be concluded that prior to his assuming its presidency, the associations previously commenced by CWI cannot be fairly said to suggest in William McElnea a lack of "good character, honesty and integrity" or his unfitness to participate in the New Jersey gaming industry.

Eight years ago, in November 1972, Mr. McElnea became president of Caesars World, Inc., and assumed major executive authority and responsibility. During his first three years as president, Mr. McElnea and CWI engaged in three transactions

which demand our attention. The nature and degree of Mr. McElnea's participation in these events must be examined to determine whether they indicate any lack of character or integrity. Then, Mr. McElnea's entire tenure as CWI president should be reviewed to ascertain whether we can say with confidence that he is fit to participate in New Jersey's casino industry.

II.

1. *Sky Lake Transaction Restructuring*

Twenty-eight months after CWI entered into its initial long-term lease of Sky Lake from Comal Corporation and following an almost eighteen month negotiation period, CWI on February 11, 1974, purchased the Sky Lake property from Comal Corporation outright in a financial restructuring of the transaction. As part of the agreement, CWI, as owner, assumed the then $10.7 million mortgage obligation to the Teamsters Pension Fund. Comal Corporation continued to be owned equally by Mr. Malnik and Mr. Cohen; and, only one year before the transaction, Mr. Cohen had pled guilty to charges related to the Flamingo "skim" prosecution. Nevertheless, in light of the lease between the parties which had existed since 1971, this 1974 purchase cannot be fairly said to represent a new association or transaction with Mr. Malnik, Mr. Cohen or the Fund and thus cannot be said to adversely reflect upon the suitability of Mr. McElnea.

2. *Corporate Debt Refinancing*

Documents in evidence produced from the files of CWI's insurance consultant and corporate attorney suggest that, at least as of January 1975, and prior to the Cove Associates transaction with Mr. Malnik, Mr. McElnea was considering the development of a comprehensive program to refinance CWI's overall corporate debt. In February, the Cove Associates deal was closed. On July 16, 1975, in its offices in Los Angeles and at Mr. McElnea's request, CWI's corporate security officer

interrogated Mr. Malnik for a full day as to his reputed association with Meyer Lansky. Mr. Malnik flatly denied any such link.

On a date apparently following this session and also apparently prior to the September 18, 1975 Securities and Exchange Commission investigation of the Cove Associates transaction, Mr. Malnik approached Mr. McElnea and Clifford Perlman in Las Vegas and inquired whether CWI would consider a $75 million sale and leaseback of its Caesars Palace property. Both executives rejected this proposal. Whatever may have been in the mind of Mr. Malnik, the serious question presented is whether Mr. McElnea's thoughts on refinancing the overall corporate debt in 1975 included or would have included any consideration whatsoever of any participation therein by either Mr. Malnik or the Teamsters Pension Fund. No evidence establishes that he did consider Mr. Malnik or the Fund as a potential source for any such financing. As a matter of fact, CWI obtained no further financing from either.

3. *Cove Associates Sale-Leaseback*

On February 20, 1975, following initial discussions three months earlier between Mr. Malnik and Clifford Perlman and following Board approval on February 5, CWI sold the Cove Haven and Paradise Stream Pennsylvania honeymoon resort properties, which it had owned for four or five years, to a Florida partnership named Cove Associates. The partners in Cove Associates are Mr. Malnik (69%) and Samuel Cohen's two sons (31%). As part of the transaction, Cove Associates leased the properties back to CWI under terms requiring CWI, as tenant, to operate and improve the two resort complexes. On the date of the transaction, the Teamsters Pension Fund granted Comal Corporation a $15.0 million loan which was secured by a mortgage from Cove Associates on the two Pennsylvania properties and which was guaranteed by Comal Corporation. The loan further required that CWI guarantee payment of the lease rental obligations to Cove Associates.

By this sale and leaseback, the Teamsters Pension Fund, Mr. Malnik and Samuel Cohen's sons were for the first time able to

establish an association with CWI's Pennsylvania honeymoon resort properties and thus were able to increase and expand their financial relationship with CWI and its assets. Samuel Cohen by this time had pled guilty to criminal charges related to the Flamingo "skim" two years earlier. Thus, nearly six years after having entered the gaming industry, CWI in early 1975 was still, in part, relying upon the Teamsters Pension Fund for its financial needs.

It is this corporate transaction and Mr. McElnea's relationship to it which causes the greatest difficulty in determining his present fitness to participate in the New Jersey gaming industry. Although not the source of the proposal, Mr. McElnea did vote his approval as a director and, as CWI's president, assisted in structuring the agreement. The transaction, by its terms, does not appear to have been illegal. The arrangement expanded already long existing associations with Mr. Malnik, Mr. Cohen (through his sons) and the Teamsters Pension Fund. It did not create those associations. Nevada gaming authorities had been aware of and did not disapprove similar associations originating in the 1971 Sky Lake acquisition. Obviously, no personal association with Mr. McElnea was involved here. Most significantly, Clifford Perlman, the corporate chief executive officer and chairman of the board, supported and voted for approval of the Cove Associates agreements.

Mr. McElnea's conduct on behalf of his employer with respect to these agreements occurred almost six years ago. It would appear that in failing to oppose the Cove Associates proposal, Mr. McElnea made a significant misjudgment. Indeed, prior to the end of 1975 that fact was made clear by the reactions of the Securities and Exchange Commission and the Nevada gaming authorities. However, in judging Mr. McElnea's "good character, honesty and integrity," we must consider the entire man and the circumstances in which he acted.

III.

As noted, the Securities and Exchange Commission on September 18, 1975, ordered a private investigation into CWI's

corporate dealings with Mr. Malnik in both the Comal Corporation and Cove Associates transactions and into Clifford Perlman's personal dealings with him in the Cricket Club. Shortly thereafter, the Los Angeles Times (on November 10, 1975) published a negative front page article under the headline "Caesars Palace Firm Under Investigation." Finally, the Nevada Gaming Commission and Gaming Control Board, on December 10, 1975, and April 13, 1976, directed that Caesars World, Inc. not expand its association with Mr. Malnik and not associate with persons of unsavory or notorious repute.

No evidence suggests any expanded or new associations with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975, almost six years ago. More specifically, no such associations seem to have attended the corporate acquisitions of the Ontel Corporation in New York in January 1976; the Pocono Palace in Pennsylvania in November 1976; the Traymore site in Atlantic City in August 1977; the Regency project in Atlantic City in June 1978; or, the Caesars Tahoe complex in Nevada in November 1979. Notably, of the $138 million so far committed by CWI to the Boardwalk Regency project, $47 million was derived from large institutional sources, $28 million from obligations undertaken to former owners of the realty and $63 million from internal corporate funds (bank lines, public offerings and operating revenues).

In February 1978, CWI freed itself of its association with Teamster Pension Fund official Allen Dorfman. CWI changed the broker for its employee health insurance from Mr. Dorfman's agency and transferred the coverage from United Founders Insurance Company to Equitable Life Insurance Company. The decision, admittedly, took the corporation more than three years to reach. It must be recognized, however, that it was Melvin Chasen who initiated the corporation's relationship with Mr. Dorfman and that it was Mr. McElnea who, in June 1974, brought in John Ames Associates to reexamine the company's insurance portfolio. It was Mr. McElnea who finally caused Dorfman's agency and its carrier to be replaced.

Mr. McElnea's contribution in obtaining conventional financing for Caesars World, Inc. has been significant. In

October 1978, principally through his efforts, CWI was able to obtain financing in an amount of $60 million from the Aetna Life Insurance Company. Until that point, the gaming industry company had been unable to obtain significant funding from such a major national institutional lender. In addition, through Mr. McElnea, CWI has been able to repeatedly obtain substantial lines of credit from major national banks such as Chemical, Security Pacific, First Chicago and others. It has been successful in its public offerings of both stocks and debentures. Its annual financial conferences, which Mr. McElnea initiated, have substantially enhanced its own as well as the industry's credibility with the financial community. Again, it was Mr. McElnea who was instrumental in 1969 in CWI's being listed on the prestigious New York Stock Exchange and who, during his presidency, did much to attract such substantial outside directors as: James Needham, the former chairman of the New York Stock Exchange (1972-1976); M. Peter Schweitzer, who for seventeen years had been vice-chairman of the board of the Kimberly Clark Corporation; and, Manuel Yellen, who at the time of his retirement from P. Lorillard and Company occupied the position of its chairman and chief executive officer.

Credit, it is true, must be given to Clifford Perlman as the chief executive officer who set the corporate policy with such vision. It was William McElnea, however, who so effectively implemented those policies and made them live. He gradually over the years gained CWI access to respected conventional institutional lenders. He has served as a major catalyst in attracting its impressive and very professional management group. He has, as chief operating officer, efficiently managed its constantly expanding operations. Without William McElnea, CWI would not have attained its present status as one of the leading companies within the gaming industry.

IV.

It would appear that in 1969 obtaining conventional financing from respected institutional sources for a gaming industry was a tougher problem than CWI and Mr. McElnea originally

anticipated. In fact, it was not until more than three years after the Cove Associates agreements that CWI, through the efforts of Mr. McElnea, obtained the precedent setting loan from the Aetna Insurance Company. The danger in the Cove Associates transaction of six years ago was that, even though Nevada authorities had not prohibited such corporate dealings with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund, the sale-leaseback agreement could have provided them with extensive enough loan obligations from CWI to potentially exercise some degree of control over CWI or its casino operations. This is the danger against which New Jersey, with its toughest possible regulatory scheme, has committed strong and unyielding vigilance.

In the licensing process, there can never be a total absence of doubt. Plainly, Mr. McElnea made a serious misjudgment in not trying to prevent CWI from engaging in the Cove Associates transaction. But, in the entirety of the evidence before this Commission, it cannot be said that the applicant has failed in its burden to produce a firm belief and conviction as to William McElnea's suitability and fitness for New Jersey's casino gaming industry and to demonstrate clearly and convincingly his good character, honesty and integrity. He accordingly ought to be found to qualify as an officer, director and shareholder as to this casino license applicant.

Although I find Mr. McElnea qualified, I stress that my decision has not been an easy one. If BRC chooses to remain in New Jersey and to sever all relations to the Perlmans, Mr. McElnea's stature and importance will increase proportionately. He must understand that his performance will be closely scrutinized in the hope that we have decided correctly. I trust that he will be aware of this fact and will discharge his responsibility in an exemplary manner.

s/ JOSEPH P. LORDI, CHAIRMAN
Joseph P. Lordi, Chairman

Dated: November 13, 1980

Vice-Chairman DANZIGER, concurring and dissenting:

In reaching my decision in this serious and important matter, I have carefully evaluated the testimony of the witnesses who appeared before us and the reliability of the documentary materials which were introduced into evidence. Moreover, I have conscientiously endeavored to assess the suitability of the applicants and the persons to be qualified in accordance with the pertinent licensing criteria. As a result of this process, I find that Clifford S. Perlman, the Chairman of the Board of Caesars World, Inc. ("CWI") and its largest stockholder with approximately 10% of the outstanding shares, has failed to meet his heavy burden of establishing his good character, honesty and integrity by clear and convincing evidence. I further find that Stuart Z. Perlman, Vice-Chairman of the CWI board and second largest stockholder with approximately 8% of its stock, has likewise failed. In contrast, I find that Jay E. Leshaw, a CWI director and officer in charge of the Florida properties, does qualify. My reasons for these three determinations are essentially contained in the Commission's Decision and I will not lengthen this opinion by elaborating upon them. However, I must address myself to the suitability of William H. McElnea, Jr., the President and Chief Operating Officer and a director of CWI.

Preliminarily, there is no question that Mr. McElnea is a person required to qualify as a condition of Boardwalk Regency Corporation's casino license application. In addition to his positions with the parent company, CWI, Mr. McElnea serves as president and a director of the intermediary company, Caesars New Jersey ("CNJ"). Further, Mr. McElnea owns the third largest block of shares in both CWI, approximately 1.6%, and CNJ, approximately 0.4%. Thus, Section 85(d) of the Casino Control Act (*N.J.S.A.* 5:12-85(d)) classifies Mr. McElnea as a so-called "qualifier."

Yet, Mr. McElnea's importance to these companies runs deeper even than his high posts and large holdings would indicate. He has been associated with CWI or its predecessor, Lum's Inc., since 1966. In the ensuing years, it was Mr. McElnea who directed the Company's financing and who

made it possible for the Company to move from a closely held fast-food restaurant firm to a publicly owned gaming giant. According to the applicant, it is Mr. McElnea who deserves much of the credit for the success of CWI in leading the way for publicly owned corporations into gaming and in breaking down the traditional resistance of respected institutional lenders against extending loans to casino operators. In fact, Mr. McElnea's contribution and value to the company are considered by CWI itself to be, in many ways, on par with those of Clifford Perlman. If Mr. Perlman's creative insights set the goals for the company, Mr. McElnea's financial arrangements powered the company toward those goals. Of course, with the rejection of Clifford Perlman by this Commission, Mr. McElnea's importance to the company increases even more.

In assessing Mr. McElnea's suitability under the licensing standards, his value, even indispensability, to CWI and CNJ must be considered. However, it would be a grievous error to conclude that such consideration warrants a lowering of the statutory criteria in order to protect the economic well-being of the company. Quite the contrary is mandated. The greater an individual qualifier's authority and responsibility, the greater the harm which that individual can bring to both legalized gaming operations in this State and public confidence in the regulatory process. Hence, this Commission is bound to exercise an extra measure of care and scrutiny in such instances. While financial stability and business competence are criteria for casino licensure, those criteria must not be allowed to subsume the separate requirement of good character. Economic strength cannot substitute for integrity.

As to the licensing criteria themselves, the operative requirement is that Mr. McElnea must demonstrate by clear and convincing evidence his good character, honesty and integrity. This requirement is purposely stringent. It is Mr. McElnea's obligation to respond to any questions raised by this record and to induce in the mind of this Commission a firm belief that he indeed possesses the positive attributes necessary for qualification. In deciding whether such a belief is engendered, each

Commissioner must consider all the relevant events and Mr. McElnea's conduct in each circumstance. Business and professional associations must be examined to ascertain whether such associations bear adversely on Mr. McElnea. Of course, I am mindful that such events, conduct and associations must be viewed in the context of then existing circumstances. Subsequent revelations and developments which were neither foreseen nor reasonably foreseeable are of little value in this process. With these concepts, I now turn to the record.

As noted, Mr. McElnea's forte is his competence and expertise in financial matters. Born in 1922, Mr. McElnea attended Dartmouth College where he obtained both a bachelors degree and a masters degree in business administration. Following graduation, he spent seven years working for New York City commercial banking houses before joining the investment banking firm of Van Alstyne, Noel and Co. in 1955. As a specialist in corporate financing, Mr. McElnea met Clifford Perlman in 1966 when Lum's, Inc., became a client of Van Alstyne. The following year, Lum's became an over-the-counter, publicly traded company and Mr. McElnea accepted a position as an "outside" director for Lum's. Naturally, Mr. McElnea continued to serve as the financial adviser and architect for the company.

It is clear that, when Mr. McElnea first joined Lum's, he was a sophisticated, experienced and mature businessman and banker. Although technically an "outside" director until November 1972, Mr. McElnea's deep involvement with the financial arrangements of the company brought him into a much closer relationship with the company and its management. In fact, the post-hearing memorandum submitted by the applicants states on page 99 that Mr. McElnea enjoyed a "close, intimate, professional relationship with [Clifford] Perlman" from the time he first became a Lum's director. It is in this framework, rather than the more typical outside director context, that Mr. McElnea's participation in the events before November 1972 must be considered.

In the late 1960's, Clifford Perlman sought to move the company into new fields. In 1969, Mr. Perlman was intro-

duced, through a person acting as a broker, to the owners of Caesars Palace who were then seeking a buyer for the casino hotel. Mr. Perlman contacted Mr. McElnea and asked him to study the proposal for the purpose of arranging the financing. Prior to the acquisition, Mr. McElnea was well aware that gaming companies were generally thought to be connected with underworld figures and that this tawdry image was a primary reason for the unavailability of major institutional financing to such companies. Mr. McElnea was also aware that, to obtain Caesars Palace, Lum's would have to assume a preexisting $18.1 million mortgage to the Teamsters Pension Fund.

On April 24, 1969, Lum's entered into an agreement for the sale of the Palace but the actual closing did not occur until September 30, 1969. In the interim period, the casino experienced a loss of $932,266 before taxes while it was still being operated by the sellers. In the comparable period for 1968, the casino had a pre-tax profit of $2,230,014. Under the terms of the acquisition agreement, Lum's was entitled to any profits realized during the settlement period. Thus, if this precipitous drop in profits was the result of embezzlement or skimming, Lum's, Inc., was deprived of a substantial sum of money at a time when the company was in a cash poor position. Although Mr. McElnea may not have been knowledgeable about reasonable fluctuations in gaming win, his failure to suggest even a consultation with independent experts or auditors cannot be ignored. This failure is underscored by the fact that Lum's, Inc., was first listed on the New York Stock Exchange on October 14, 1969, and that Mr. McElnea was both the acknowledged financial expert and an outside director. Failure to investigate such circumstances in this State under our law, I submit, would cause this Commission serious concern. However, there is much more.

The applicant and Mr. McElnea argue that, in the years following acquisition of the Palace, they were in a new industry and they were not far progressed on the so-called "learning curve." This argument cannot withstand scrutiny. Mr. McElnea's sophistication and accomplishment in business and finance has already been demonstrated. Even assuming

that he was relatively naive about the gaming industry, the events which occurred in rapid fashion during and after the acquisition of the Palace must have accelerated his education. Beyond the casino's loss during the settlement period, a search of the casino by the Federal Bureau of Investigation in December 1970, must have been a further awakening. The F.B.I.'s discovery of large sums of money in certain lockboxes led to an investigation by the Securities and Exchange Commission in early 1971. In the course of the investigation, many employees whom Lum's had retained from the prior owners invoked their Fifth Amendment right to avoid self-incrimination when questioned about the casino loss during the settlement period. Such occurrences should have alarmed Mr. McElnea if he truly hoped to upgrade the image of casino gaming and to attract major lenders. New Jersey requires, at a minimum, more caution and concern than exhibited by Mr. McElnea in this case.

It was against this background that the Sky Lake transactions commenced. Mr. McElnea testified that the proposal was first brought to the attention of Clifford Perlman in 1970 by Mel Chasen, then president of Lum's, Inc. Mr. McElnea knew that the owner of the property was the Comal Corporation which was owned by Alvin I. Malnik and Samuel Cohen. Although Mr. Perlman initially rejected the proposal, Mr. Chasen again offered it on behalf of Comal in 1971. This time Mr. Perlman agreed to consider it. A meeting was held in early July, 1971. According to Mr. McElnea, the meeting was attended by Mr. McElnea, other corporate officers and Messrs. Malnik and Cohen.

A few weeks prior to the meeting, Mr. McElnea received a telephone call from Mr. Chasen who advised that Messrs. Malnik and Cohen had "controversial" reputations. At the meeting, Mr. Malnik presented the Sky Lake proposal. However, Mr. McElnea has no recollection of questioning Mr. Malnik or Mr. Cohen about their reputations at that time. In any event, Mr. McElnea was told by Mr. Chasen that Mr. Cohen had been convicted of a Commodity Exchange Act violation and that Mr. Malnik was the subject of disturbing

allegations in Hank Messick's book, *Lansky*. Mr. McElnea denies knowing or being told of Mr. Cohen's pending indictment with Meyer Lansky for skimming from the Flamingo hotel casino in Las Vegas. That indictment was returned in March 1971 by a federal grand jury sitting in Florida.

The Comal proposal was presented to the Lum's board of directors later in July 1971. By that time, the offer had been changed from a simple sale of the land to a lease with an option to purchase the stock of Comal after three years and an option to purchase portions of the land for development. These modifications were the result of Lum's efforts to accommodate Comal's tax problems. The board decided to proceed with the transaction subject to a feasibility study and an appraisal.

Of more significance is the fact that the board was apprised of Mr. Cohen's commodity violation and Mr. Malnik's notoriety. Specifically, the book *Lansky* was discussed. In that book, Mr. Malnik was accused of organized crime activities and association with Meyer Lansky. Moreover, the book recited the fact that electronic surveillance had been conducted on Mr. Malnik in 1963 and damaging conversations were recorded. Further, the board knew that Mr. Malnik was suspected by several government agencies of being involved in criminal activities. Indeed, the corporation's own counsel, David Bernstein of Rogers and Wells, implored the board not to take any action until the Malnik allegations were discussed with the Justice Department. To be sure, the board was told by Mr. Chasen that Mr. Malnick denied the allegations, that he was indicted but never convicted, and that he was a member of the Florida bar.

In the face of the serious questions raised regarding both Mr. Malnik and Mr. Cohen, Mr. McElnea joined with other board members in voting for the Sky Lake proposal and in ignoring the entreaties of the company's own counsel. Mr. McElnea argues that it would have been futile to ask a government agency for its opinion in this matter and that such an inquiry would have set a bad precedent. These lame excuses are not acceptable now and were not acceptable then. If Mr. McElnea

really intended to raise his company above the suspicions surrounding the gaming industry, then he would not acquiesce in Sky Lake without so much as an inquiry into the truth or falsity of the allegations. If that inquiry brought no response, then nothing was lost. As to setting a bad precedent, Mr. McElnea would have this Commission believe that he then expected Lum's, Inc., the parent corporation of a licensed Nevada gaming company, to routinely enter into multimillion dollar real estate transactions with persons of Mr. Malnik's reputation. Unfortunately, subsequent events give reason to believe that the company may have anticipated just such repeated transactions. Mr. McElnea's support for this transaction, considering his importance to the corporation, his sophistication and expertise call into issue his ability to adequately perform under the strict regulatory controls of this State.

The nature of the Sky Lake transaction is of great importance. Mr. McElnea would characterize it as hardly more than an ordinary, arms-length real estate transfer. The record does not support that characterization. As noted, the proposal had already undergone substantial revisions before it was presented to the board in July 1971. These changes were readily accepted by Lum's management in order to protect Comal from adverse tax consequences. While some adjustments to accommodate the other party in a transaction may not be unusual, the drastic alterations involved here actually prevented Lum's from developing the property for a substantial period of time, a period during which the Florida land market collapsed.

In October 1971, the Sky Lake agreement called for Lum's to include, as part of the sale price, warrants to purchase up to 600,000 shares of Lum's stock at various prices. Upon hearing of this, Nevada gaming authorities indicated that such stock warrants might require approval of Messrs. Malnik and Cohen. Although the warrant provision was deleted in 1972, Lum's knew that Malnik and Cohen might not be approved by the Nevada authorities. Nevertheless, the interminable negotiations and revisions of the Sky Lake transaction dragged on. In my view the warrants were ultimately not part of the trans-

action because of regulatory agency pressure not any reaction by Mr. McElnea to the nature of his business associates. This lack of concern in my view is unacceptable under the Casino Control Act and the public policy of this State.

At no point did Mr. McElnea voice any opposition. Even after he assumed the presidency of the company in November, 1972, he did not press to take advantage of opportunities to disengage from Sky Lake. More disturbing still, he uttered no objection when he finally learned of Samuel Cohen's indictment with Meyer Lansky for skimming from the Flamingo. His failure to recall when and how he learned of this devastating information casts serious doubt about his candor before this Commission. In fact, Mr. McElnea testified here that he would have probably changed his opinion about entering the transaction if he had known of Mr. Cohen's indictment.

Upon discovery that not only Mr. Malnik but Mr. Cohen was alleged to be associated illegally with the notorious Lansky, Mr. McElnea should have taken immediate steps to reexamine the company's involvement with Comal. Moreover, Mr. McElnea could have readily ascertained that the Cohen indictment pre-dated the initial Sky Lake proposal by nearly three months. Given Mr. McElnea's assertion that the CWI board of directors were a closely knit group, he would have had cause to wonder why he was not told of the indictment by Clifford Perlman and the other directors who were aware of it prior to Sky Lake. Furthermore, Mr. McElnea knew from the outset that the Sky Lake proposal required the company to assume a $10 million dollar Teamsters Pension Fund mortgage. This too did not prompt a reaction.

Two additional matters involving the Sky Lake transaction deserve mention. First, on the issue of the $164,000 sewer bond that was prepaid by Comal, I find that Caesar's World was not required to make the repayment to Alvin Malnik. The reason they were not required to repay these monies was that they purchased the assets of Comal (a corporation) and since one of the assets was the prepaid sewer bond, that asset should have been transferred for the benefit of the stockholders of Caesars World, Inc. However, William McElnea, the financial expert,

disregarded the concerns and needs of his own company and stockholders to benefit Alvin Malnik and Comal. Secondly, the eagerness displayed by the corporate executives, including Mr. McElnea, in permitting Alvin Malnik to secure a $375,000 yacht to the detriment of the corporation and its stockholders and their willingness to maintain the pleasure vessel, on behalf of Alvin Malnik, refute any assertion that Sky Lake was an arms-length real estate transaction. These dealings are the type which can be employed to skim money from the corporate till. Unfortunately, Mr. McElnea, the person with the most sophisticated financial acumen of those who have appeared before this Commission, consented to these transactions at substantial cost and detriment to the stockholders he represented.

In short, the Sky Lake transaction belies Mr. McElnea's contention that he was concerned about the reputation and business associates of CWI. The mere fact that the N[illegible]'a authorities did not issue any instruction to terminate the Sky Lake transaction will not absolve Mr. McElnea. An apparent eagerness to associate with disreputable individuals and a reluctance to sever the relationship even if one of the individuals is convicted of casino-related crimes argue powerfully against his character and integrity. New Jersey need not allow persons to hold positions of authority in casino companies unless such persons can be trusted to act properly without being constantly threatened or coerced by the regulatory authorities.

As previously mentioned, Mr. McElnea succeeded Mel Chasen as president and chief operating officer of CWI in November 1972. (Lum's, Inc., changed its name to Caesars World, Inc., in December 1971). At about the same time, Mr. McElnea was informed by Clifford Perlman that Philip Hannifin, the Chairman of the Nevada Gaming Control Board, had expressed concern about Mr. Perlman's involvement in the Cricket Club, a condominium project in Florida. Mr. Hannifin's concern was caused by the fact that Mr. Perlman's chief partner in the Cricket Club was Alvin Malnik. Mr. McElnea assumed that Mr. Hannifin was only distressed because Mr. Perlman's interest was a personal one and that Mr. Hannifin

would not react similarly to future dealings between CWI and Mr. Malnik. It does not appear that Mr. McElnea made any effort to verify the accuracy of his assumption prior to the Cove Haven sale and lease back with Mr. Malnik in early 1975. The arrogance of Mr. McElnea in relying on this faulty assumption evinces a callousness to the Nevada regulatory system which, if it occurred in New Jersey, would be clearly unacceptable.

Before addressing the Cove Haven transaction, it is appropriate to consider Mr. McElnea's conduct as CWI's president in the two intervening years. More particularly, his interactions with the Teamsters Pension Fund, Allen M. Dorfman, the Amalgamated Insurance Agency ("Amalgamated") and United Founders Life Insurance Company ("United Founders") must be examined.

In 1972, CWI had a number of financial relationships to the Teamsters Pension Fund, principally the mortgages on Sky Lake and Caesars Palace. At the direction of then President, Mel Chasen, CWI transferred its employee group health insurance from Massachusetts General to United Founders on June 1, 1972. At the same time, CWI retained Amalgamated, Dorfman's agency, as its broker for this coverage. From the documents produced by John Ames and from the transcript of Mel Chasen's testimony before the Securities and Exchange Commission, it is quite evident: (1) that Allen Dorfman was a principal in Amalgamated; (2) that Mr. Dorfman was apparently able to manipulate Teamsters Pension Fund loans and mortgages; and (3) that the CWI group insurance was placed with United Founders through Mr. Dorfman's agency for the purpose of obtaining favorable treatment for CWI by the fund.

The applicant responds to these facts by arguing that the costs and benefits of the United Founders policy were fair and competitive and that Amalgamated's fees were not unreasonable. Further, as to Mr. McElnea, the applicant emphasizes that these arrangements were made before he became president and chief operating officer. Even if these contentions were accepted, later events place responsibility squarely on Mr.

McElnea. As early as 1974, CWI management was advised by its independent consultants to replace United Founders as underwriter and Amalgamated as broker for the group health plans. These suggestions became more frequent and urgent until the insurance was finally transferred in February 1978.

Evidence is uncontroverted that United Founders Life Insurance of Oklahoma and Illinois were unrated by Bests Insurance, the prestigious rating service for the insurance industry. John Ames, CWI's consultant, knew of this and testified that he would never place a client's insurance coverage with such companies because of their financial instability.

According to a memorandum of John Ames, he talked with Mr. McElnea as chief operating officer and Bertin Perez, the former financial head and now a consultant of CWI, on January 23, 24 and 25, 1975. At that time, it was indicated that CWI could prepay a Teamsters Pension Fund mortgage for $11 million and "until that is done, the climate for moving the United Founders group case is still not great." The memorandum continues in the next and concluding sentence: "On the other hand, Bill has done a lot of study on a possible sale and lease back of the Palace and if it should take place, this would change the whole picture." The "Bill" is obviously Mr. McElnea.

Standing alone, the excerpts from this memorandum do not indicate whether Mr. McElnea had any specific party in mind for a sale and lease back of the Palace nor whether the changed picture would mean retention or quicker severance of Amalgamated and United Founders. However, it is evident that Mr. McElnea was fully cognizant of the connection between the insurance placement and any negotiations with the Teamsters Pension Fund. Neither the applicant nor Mr. McElnea have contested this relationship and their awareness of it. Even more distressing is the fact that, during this period, Allen Dorfman was convicted of a federal offense for taking kickbacks to arrange loans from the pension fund. He served a prison sentence from March to December 1973. This must be combined with Mr. McElnea's admission that he knew in 1975 of the Teamsters Pension Fund's widespread reputation for

"having done such things as paid illegal finders fees and paid kickbacks and a lot of very nasty business transactions."

The applicant and Mr. McElnea contend that CWI could not extricate itself from Amalgamated and United Founders any sooner than they ultimately did. This was allegedly due to the problems created by United Founders' precarious financial status, so precarious, in fact, that withdrawal of the CWI account would probably have broken the carrier. Again, even if this contention were accepted, the Ames consultants advised that CWI had sufficiently aided United Founders' recovery by the end of 1976 to allow the transfer. Despite the fact that he agreed with the position of the Ames group, Mr. McElnea told Bertin Perez on November 23, 1976, to do nothing for one month.

Mr. Ames spoke to Mr. McElnea the same day. In his memorandum of this conversation, Mr. Ames states Mr. McElnea's reason for the delay as being that "they are still finalizing negotiations with the teamsters pension fund on extending maturities on some of those Florida properties and Bill [McElnea] didn't want to do anything which would rock any boats or make any waves." This statement unequivocally refutes the applicant's assertion that any delay was the result of the carrier's solvency problems and not an effort to appease and accommodate Dorfman. Moreover, the argument that the delay was inconsequential utterly misses the point. Mr. McElnea did not want the transaction completed at that time. Obviously, he was not willing to assume that it would be delayed in the ordinary course.

In any event, the delay was hardly one month. A June 15, 1977, memorandum from V. Paul Ricken to John Ames reveals that seven months later Ricken was still waiting for the "green light" from Mr. McElnea. The only conclusion which can be drawn is that Mr. McElnea was thoroughly versed in the rules of the Teamsters Pension Fund and that he was quite willing to follow those rules. It is not important whether he did so purposely to aid the nefarious schemes of others or whether he aided those schemes to achieve his and CWI's own economic ends. The Casino Control Act does not require or permit this

Commission to draw such distinctions. These practices establish Mr. McElnea's unsuitability to participate in New Jersey's gaming industry. Negative implications also must be drawn from the applicant's failure to produce Bertin Perez an obviously important witness to the transaction with Alan Dorfman. This failure, I infer, was because his testimony would support the negative inferences about Mr. McElnea drawn from the Ames' record and testimony.

Added to all the foregoing, the Cove Haven transaction and its aftermath demand that the Commission exclude Mr. McElnea. As mentioned above, Mr. McElnea knew of the Hannifin conversation with Clifford Perlman in November 1972. Of course, he knew of Mr. Malnik's reputation and he also knew before the deal was closed on February 20, 1975, that the $15 million was obtained by Mr. Malnik from the Teamsters Pension Fund at 9% interest. The offer from Mr. Malnik was to charge roughly 15% of the purchase price to CWI as rent. It has already been demonstrated that Mr. McElnea was then aware of the reputation of the fund and, from personal experience, the manner in which it did business.

Despite all of these factors, Mr. McElnea tendered no objection when the offer was presented to the board by Clifford Perlman. Nor did Mr. McElnea share with his fellow board members the fact of the Hannifin conversations with Mr. Perlman. Further, Mr. McElnea chose not to call in the CWI Director of Security, former FBI agent Harold Campbell, to determine prior to the transaction whether any new information was available on Mr. Malnik. Instead, Mr. McElnea requested Mr. Campbell to conduct such an investigation, including an interview of Mr. Malnik, in July 1975 well after the transaction was completed. And even then, Mr. McElnea acted only upon learning that the Nevada authorities were investigating Mr. Malnik and Cove Haven. Although steadfastly maintaining that no hard evidence was ever produced against Mr. Malnik, Mr. McElnea acknowledges that Harold Campbell believed Mr. Malnik to be an organized crime figure.

There are yet other serious questions regarding the Cove Haven transaction. The sale and lease back was conducted

between a CWI subsidiary and a Florida partnership called Cove Associates. The partners were Mr. Malnik and his wife, and the two sons of Samuel Cohen. Mr. McElnea concedes that no business should have been conducted by CWI with the convicted Samuel Cohen. Yet, Mr. McElnea becomes oddly myopic in this respect.

Before final approval of the transaction, Harold Berkowitz, one of CWI's outside directors, suggested a condition be imposed to the effect that CWI would be granted a deferment of payments on its Sky Lake obligations. This condition was accepted and, in July 1975, a substantial deferment was obtained. Of course, as Mr. McElnea well knew, the Sky Lake obligations ran to Comal Corporation not to Cove Associates. Comal was Mr. Malnik and Samuel Cohen. Despite his admission that Samuel Cohen was unacceptable as a business associate and despite his admission that he then knew of Mr. Cohen's conviction for skimming from a Las Vegas casino, Mr. McElnea agreed to do business with Mr. Cohen through Alvin Malnik. In addition, the deferred Sky Lake payments were, in large part, a Teamsters Pension Fund obligation. Mr. McElnea, with his redoubtable business acumen, chose not to dwell on the obvious implication that Samuel Cohen would receive a direct benefit from the Cove Haven proceeds and that the disreputable Mr. Malnik would have to intercede with the Teamsters Pension Fund on behalf of CWI. Naturally, too, any hope of separating CWI from the Teamsters Pension Fund in the near future was snuffed by the Cove Haven commitment. In this act, Mr. McElnea was no idle observer. He was instrumental. Again, actions that would be more than enough to deny qualifier status in this State.

The closing of the Cove Haven deal, in February 1975, and the grant of a deferment from Comal in July 1975, did not mark the end of Mr. McElnea's association with Mr. Malnik. Although the exact date is in dispute, in early 1975, Mr. Malnik approached Mr. Clifford Perlman and Mr. McElnea with one more proposition. This time he proposed no less than a $75 million sale and lease back of the Palace itself. As usual, the source of Mr. Malnick's funds was to be the Teamsters Pension

Fund. Notwithstanding all that had gone before, Mr. McElnea admits that "we listened."

As to the seriousness of Mr. Malnik's last proposition, Mr. Fritsch of Rogers and Wells observed in a January 17, 1975, memorandum that the proposed Cove Haven transaction appeared "atypical" and "very costly" but it should proceed because it was only the "first step" in the refinancing of CWI's debt. The clear implication is that the benefits accruing to the other party, Cove Associates, would be inducement to further, perhaps more favorable financing. It should be recalled that Mr. Ames' memorandum of January 1975 recites that Mr. McElnea was then thinking seriously of a sale and lease back of the Palace. Although this proposal never came to fruition, it is quite clear that Mr. McElnea did not say: "No, we'll not do business with Mr. Malnik again." To the contrary, only the publication of a damaging article in the Los Angeles Times and subsequent inquiries by regulatory authorities finally terminated consideration of Mr. Malnik's proposition. These events provide a chilling insight into the financial activities being conducted by Mr. McElnea in 1975. Although the applicant argues that this adverse inference should not be drawn, it is appropriate to note that Mr. McElnea himself did not resume the stand at this hearing to address these matters after Mr. Ames' testimony.

CONCLUSION

The Casino Control Act intended, among other things, to insure that organized crime does not infiltrate the resort casino industry in Atlantic City or the service industries interacting with those resort casinos. This Commission has an awesome responsibility in controlling the infiltration of organized crime into legitimate business as well as assisting in stopping the corrupting influence of criminal cartels and their acquisition and expansion of political and social influence.

The potential of infiltration and domination of legitimate business by organized crime has been incontrovertibly revealed by a series of investigations and congressional probes over the

last 25 years. The attempt to conceal criminal activities in a mantle of respectability is dramatically presented by the evidence in this case. It appears Mr. McElnea contributed to the efforts of persons with reputations as high-ranking racketeers to invest large sums of money in legitimate enterprises. Moreover, through these arrangements, Mr. McElnea granted those persons the economic leverage to exercise very real control over a licensed gaming company. We should not license such an individual.

It is clear from the present record that William McElnea traveled two different roads. Were he to have remained solely on the path composed of Paul Bagley from E. F. Hutton and Robert VanBuren and Robert R. Ferguson from the Midlantic Bank and the First National State Bank Corporation respectively, the world of which he was a part as an investment banker, I would probably have found he had met the standards of honesty and integrity of the Casino Control Act by clear and convincing evidence. However, he chose another course. Whatever his motivation, he traveled another road simultaneously. This alternative road was composed of Allen Dorfman, Alvin Malnik, Samuel Cohen, the Central and Southwestern States Teamster Pension Funds, the Amalgamated Insurance Agency and the United Founders Life Insurance Companies of Oklahoma and Illinois. He traveled the road with mendacity and with disregard for the regulatory process. Fortunately, the legislative wisdom of New Jersey does not permit this dual personality. I find I have no choice but to vote to deny Mr. McElnea's status as a qualifier. I find him unsuitable. New Jersey public policy demands that he be made of sterner stuff than he exhibited in this case. This state need not allow persons to do business within this state who choose to operate on several occasions with persons of such obvious bad reputations.

Section 84(c) requires "each applicant" to produce such "information, documentation and assurances of good character as may be required to establish by clear and convincing evidence the applicant's good reputation for honesty and

integrity." Such information shall include business activities and professional associates.

Mr. McElnea's business associations reflect upon his present character and fitness. The duration of these associations, their purpose and intensity, and the reputation and character of the associates preclude his being found qualified under *N.J.S.A.* 5:12-89(b)(2). In furtherance of this finding, Mr. McElnea's knowledge of the "bad" reputation and character of the associates is compelling. He did not exercise efforts to determine the suitability of these associates prior to engaging in business relations with them, nor did he terminate or attempt to terminate the relationships in a timely fashion once aware of their reputations and character. Even a brief association with a person, pension fund, or business known to be of such questionable character as the persons and business referred to herein, would be a powerful negative proof of honesty and integrity. It is clear that the greater notoriety the more negative the reflection on the applicant. The persons and businesses Mr. McElnea chose to associate with are notorious and clearly unacceptable today as they were for the last decade.

A business and its leadership must be alert to persons or other related businesses who compromise their concern for integrity. CWI and Mr. McElnea, as the Chief Operating Officer and Director, should have been concerned with those with whom it entered into professional relationships. The fact that he permitted his company, without objection, to knowingly deal with persons known or reputed to be linked with organized crime, corruption, kickbacks and the like, permits adverse and fatal inferences pertaining to his honesty and integrity to ensue. Here, where the course of conduct reveals a series of transactions over a course of more than a decade, such inferences are unavoidable. Moreover, the sources of Mr. McElnea's knowledge regarding these unsavory associates are significant. He had been placed on notice by his own outside counsel, Dave Bernstein, by the Securities and Exchange Commission, by numerous newspaper and other media material, by the Nevada Gaming Board and Commission, and by his own shareholders and corporate security officer. These notices from

government and the private sector coupled with his willful disregard for this advice indicate a reckless indifference to the opinion of the public, government, his shareholders and advisors to the detriment of his own character, his company's reputation, the requirements and needs of his stockholders and the regulatory process. The adverse reflection on Mr. McElnea's character is severe and conclusive. Deliberate initiation, cultivation and maintenance of the relationships with Alvin Malnik, Sam Cohen, the Teamster Pension Fund, Allen Dorfman and his insurance agency, in the face of this widespread official disapproval is evidence of a lack of good character.

As the Chief Operating Officer and Director, and one of the most important if not the most important person in the parent corporation, to maintain these associations with disreputable individuals is an indication of not only past behavior but an important predictor of future conduct. I find that his conduct is such that I have grave reservations that cannot be overcome about his willingness and ability to operate within the strict regulatory guidelines of the State of New Jersey.

For all the foregoing reasons, William H. McElnea, Jr., is not qualified.

s/ MARTIN B. DANZIGER
Martin B. Danziger, Vice-Chairman

Dated: November 13, 1980

APPENDIX D

Final Order Granting Conditional Casino Licenses

STATE OF NEW JERSEY

CASINO CONTROL COMMISSION

Docket No. 80-CL-1
Entered October 25, 1981

In the Matter of

THE APPLICATIONS OF BOARDWALK REGENCY CORPORATION AND THE JEMM COMPANY FOR CASINO LICENSES.

This matter having been brought before the New Jersey Casino Control Commission upon the applications of Boardwalk Regency Corporation (William R. Glendon, Esq. and Morris Brown, Esq. appearing) and the Jemm Company (James Cooper, Esq. appearing) for casino licenses, in the presence of John J. Degnan, Attorney General (Michael R. Cole, Assistant Attorney General appearing); and the Commission having considered all of the evidence in the record, and the briefs and arguments of counsel; and the Commission having for good cause shown and for the reasons more fully set forth on the record, made the following findings:

1. With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford Perlman and Stuart Perlman have been placed on an unpaid leave of absence from any position as:

(a) officer;

(b) director;

(c) employee.

2. With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford and Stuart

Perlman will receive no remuneration in any form for services rendered or otherwise. Nor will Boardwalk Regency Corporation, Caesars New Jersey, Inc. or Caesars World, Inc. receive from Clifford or Stuart Perlman any services, direct or indirect, or permit them to exert any influence or control, direct or indirect, with regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. or Caesars World, Inc.

3. With regard to any securities of Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc. held or beneficially owned by Clifford or Stuart Perlman:

(a) neither Clifford nor Stuart Perlman shall be permitted to exercise, directly or through any trustee or nominee, any right conferred by such securities; and

(b) neither Clifford nor Stuart Perlman shall be permitted to receive any dividends or interest upon any such securities.

4. In light of paragraphs 1, 2 and 3 above, and subject to the conditions set forth below, Boardwalk Regency Corporation has satisfied all of the requirements of the Act for casino licensure.

5. The Jemm Company has satisfied all of the requirements of the Act for casino licensure as a landlord.

It is now on this 25th day of October, 1980, ORDERED that a casino license be and hereby is issued to Boardwalk Regency Corporation subject to the following conditions:

By no later than November 26, 1980, Boardwalk Regency Corporation shall advise the Commission:

(a) whether Caesars World, Inc. seeks to continue to operate licensed casino hotels in this jurisdiction. In the event it does, this Commission shall direct Caesars World, Inc. and Caesars New Jersey, Inc. to require both Clifford and Stuart Perlman to dispose of any interest whatsoever which either of them may hold in Caesars World, Inc., Caesars New Jersey, Inc. or in any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; and shall further direct

that both Clifford and Stuart Perlman be removed from any position as an officer, director or employee of Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation and any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; and shall further direct that neither Clifford or Stuart Perlman shall receive any remuneration in any form, whether for services rendered or otherwise, from Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation, or from any other subsidiary company of Caesars World, Inc., in this or any other jurisdiction; and further in that event Caesars World, Inc. shall submit for Commission review and approval by November 26, 1980, a detailed plan and timetable for accomplishing the divestiture of all such securities and removal from all such positions; or

(b) whether Caesars World, Inc. seeks to withdraw from the operation of licensed casino hotels in this jurisdiction. In that event Caesars World, Inc. shall submit for Commission review and approval by November 26, 1980, a detailed plan and timetable for withdrawing from the operation of licensed casino hotels in this jurisdiction.

And it is further ORDERED that a casino license as a landlord be and hereby is issued to the JEMM Company.

And it is further ORDERED that a copy of this Order be served on all parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: JOSEPH P. LORDI
Joseph P. Lordi, Chairman

MARTIN B. DANZIGER
Martin B. Danziger, Vice Chairman

DON M. THOMAS
Don M. Thomas, Commissioner

CARL ZEITZ
Carl Zeitz, Commissioner

MADELINE H. MCWHINNEY
Madeline H. McWhinney, Commissioner

APPENDIX E

Order Granting Casino Licenses

STATE OF NEW JERSEY

CASINO CONTROL COMMISSION

Docket No. 80-CL-1
Entered October 24, 1981

In the Matter of

THE APPLICATIONS OF BOARDWALK REGENCY CORPORATION AND THE JEMM COMPANY FOR CASINO LICENSES.

This matter having been brought before the New Jersey Casino Control Commission upon the applications of Boardwalk Regency Corporation (William R. Glendon, Esq. and Morris Brown, Esq. appearing) and the Jemm Company (James Cooper, Esq. appearing) for casino licenses, in the presence of John J. Degnan, Attorney General (Michael R. Cole, Assistant Attorney General appearing); and the Commission having considered all of the evidence in the record, and the briefs and arguments of counsel; and the Commission having for good cause shown and for the reasons more fully set forth on the record, made the following findings:

1. Clifford Perlman and Stuart Perlman are both persons required by the Casino Control Act to be qualified in order for Boardwalk Regency Corporation to be eligible to hold a casino license.

2. Clifford Perlman and Stuart Perlman are not qualified.

3. Save for these two individual qualifiers, Boardwalk Regency Corporation has satisfied all of the requirements of the Act for casino licensure.

4. The Jemm Company has satisfied all of the requirements of the Act for casino licensure as a landlord.

5. Boardwalk Regency Corporation is presently operating the Boardwalk Regency Hotel and Casino under a temporary casino permit which will expire no later than midnight on Sunday, October 26, 1980.

It is now on this 24th day of October, 1980, ORDERED as follows:

1. Prior to the expiration of that temporary casino permit this Commission will determine the casino license applications of Boardwalk Regency Corporation and the Jemm Company.

2. If, at the time the Commission determines the casino license application of Boardwalk Regency Corporation, Clifford and Stuart Perlman remain in positions as persons required by the Act to be qualified, the casino license application of Boardwalk Regency Corporation will be denied, and a conservator appointed.

3. On the other hand, if at that time Clifford and Stuart Perlman are no longer persons required by the Act to be qualified, the Commission will grant the casino license application of Boardwalk Regency Corporation, subject to such conditions as the Commission may deem appropriate.

4. The Commission stands ready to reconvene at any time up until midnight on Sunday, October 26, 1980, to hear from Boardwalk Regency Corporation and to rule upon its casino license application.

5. The actions which will have to be taken on behalf of Boardwalk Regency Corporation prior to the Commission's determination of its casino license application in order to render Clifford and Stuart Perlman persons *not* required to be qualified are as follows:

(a) With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford and Stuart Perlman must have been placed on an unpaid leave of absence from any position as:

(i) officer;

(ii) director;

(iii) employee.

(b) With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford and Stuart Perlman may receive no remuneration in any form for services rendered or otherwise. Nor may Clifford and Stuart Perlman offer to perform any services, directly or indirectly, or exert any influence or control, direct or indirect, with regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. or Caesars World, Inc.

(c) With regard to any securities of Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc. held or beneficially owned by Clifford or Stuart Perlman:

(i) neither Clifford nor Stuart Perlman shall be permitted to exercise, directly or through any trustee or nominee, any right conferred by such securities; and

(ii) neither Clifford nor Stuart Perlman shall be permitted to receive any dividends or interest upon any such securities.

And it is further ORDERED that if the actions set forth above are taken on behalf of Boardwalk Regency Corporation, any casino license issued to Boardwalk Regency Corporation by this Commission shall be subject to the following conditions:

By no later than November 26, 1980, Boardwalk Regency Corporation shall advise the Commission:

(a) whether Caesars World, Inc. seeks to continue to operate licensed casino hotels in this jurisdiction. In the event it does, this Commission shall direct Caesars World, Inc. and Caesars New Jersey, Inc. to require both Clifford and Stuart Perlman to dispose of any interest whatsoever which either of them may hold in Caesars World, Inc., Caesars New Jersey, Inc. or in any and all subsidiary companies of Caesars World, Inc. in this or

any other jurisdiction; and shall further direct that both Clifford and Stuart Perlman be removed from any position as an officer, director or employee of Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation and any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; and shall further direct that neither Clifford or Stuart Perlman shall receive any remuneration in any form, whether for services rendered or otherwise, from Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation, or from any other subsidiary company of Caesars World, Inc., in this or any other jurisdiction; and further in that event Caesars World, Inc. shall submit for Commission review and approval by November 26, 1980, a detailed plan and timetable for accomplishing the divestiture of all such securities and removal from all such positions; or

(b) whether Caesars World, Inc. seeks to withdraw from the operation of licensed casino hotels in this jurisdiction. In that event Caesars World, Inc. shall submit for Commission review and approval by November 26, 1980, a detailed plan and timetable for withdrawing from the operation of licensed casino hotels in this jurisdiction.

And it is further ORDERED that a copy of this Order be served on all parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: JOSEPH P. LORDI
Joseph P. Lordi, Chairman

MARTIN B. DANZIGER
Martin B. Danziger, Vice Chairman

DON M. THOMAS
Don M. Thomas, Commissioner

CARL ZEITZ
Carl Zeitz, Commissioner

MADELINE H. MCWHINNEY
Madeline H. McWhinney, Commissioner

APPENDIX F

In the Supreme Court of the
STATE OF NEW JERSEY
Docket No. 18,935

In the Matter of the Application of
BOARDWALK REGENCY CORPORATION
For a Casino License

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Clifford Perlman and Stuart Perlman hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of New Jersey entered on July 21, 1982 affirming as modified the judgment of the Superior Court of New Jersey, Appellate Division.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: October 15, 1982

PETER M. FISHBEIN
MICHAEL D. BLECHMAN
KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER
425 Park Avenue
New York, N.Y. 10022
(212) 407-8000

Attorneys for Clifford and Stuart Perlman

Received
October 18, 1982
Steven W. Townsend
Supreme Court Clerk

In the Supreme Court of the
STATE OF NEW JERSEY
Index No. 18,935

In the Matter of the Application of
BOARDWALK REGENCY CORPORATION
For a Casino License

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF SERVICE

STEVEN KATZENSTEIN, being duly sworn, deposes and says that he is employed by the law firm of Kaye, Scholer, Fierman, Hays & Handler, is over the age of eighteen years and is not a party to this action.

1. On the 15th day of October 1982, deponent served a true copy of the Notice of Appeal To The Supreme Court of The United States annexed hereto, by depositing the same, enclosed in sealed, post-paid wrapper in the United States Post Office deposit box regularly maintained by the U.S. Postal Service at 425 Park Avenue, New York, New York, addressed to the following attorneys:

Robert J. Genatt
General Counsel
New Jersey Casino Control Commission
Princeton Pike Office Park
Building No. 5
CN-208
Trenton, New Jersey 08625

Irwin I. Kimmelman
Attorney General of the State of New Jersey
Department of Law and Public Safety
Division of Law
State House Annex
CN 112
Trenton, N.J. 08625
Att: Michael Cole

Morris Brown, Esq.
Wilenitz, Goldman & Spitzer, P.C.
Attorneys for Caesars New Jersey, Inc.,
Caesars World, Inc. and Regency Corporation
900 Route 9
P.O. Box 10
Woodbridge, N.J. 07095

William R. Glendon, Esq.
Rogers & Wells
Pan Am Building
200 Park Avenue
New York, New York 10166

s/ STEVEN KATZENSTEIN
Steven Katzenstein

Sworn to before me this
1st day of October, 1982

s/ RICHARD J. HALLORAN
Notary Public

RICHARD J. HALLORAN
Notary Public, State of New York
No. 60-4818583
Qualified in West Chester County
Certificate Filed in New York County
Commission Expires March 30, 1983

APPENDIX G

N.J. Stat. Ann. § 5:12-89, entitled "Licensing of Casino Key Employees," provides in subsection (b)(2):

> Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency which shall specify the experiences of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are

received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.